

**Council Meeting: June 19, 2012****SUBJECT: Introduce a Bicyclist Anti-Harassment Ordinance – STUDY  
ISSUE DPW 12-01****BACKGROUND**

This 2012 study issue (Attachment A) is a Bicycle and Pedestrian Advisory Commission nomination that the City consider adoption of a bicyclist anti-harassment ordinance modeled after the City of Los Angeles' recently adopted ordinance. A bicyclist anti-harassment ordinance would make it unlawful to intentionally force or attempt to force a bicyclist from a roadway with the intent to injure or distract the bicyclist simply because they are bicycling. It would subject violators to liability in civil court for damages, fees, and litigation costs. Existing civil and criminal laws are viewed by some as difficult to enforce and lacking specificity and “teeth” on the issue of motorists and others not allowing bicyclists their rightful use of the road. This ordinance would not preclude or limit pursuit of remedy through the criminal court system. The proposed ordinance specifies civil penalties but does not make violation of the ordinance a misdemeanor or infraction and is therefore not enforceable by the City’s Department of Public Safety. Citizens who feel they were harassed in violation of the ordinance would need to bring a civil lawsuit and any remedies would be ordered by the courts.

**EXISTING POLICY**

Law Enforcement Sub-Element Policy A.5, Facilitate the safe movement of pedestrians, bicyclists, and vehicles.

**DISCUSSION**

Staff has drafted a proposed ordinance largely based on the City of Los Angeles’ ordinance (Attachment B). The Office of the City Attorney (OCA) has reviewed the proposed ordinance and considered legal issues and other ramifications to the City. The ordinance would allow bicyclists to seek treble damages or a statutory penalty of \$1,000 (whichever is greater) and attorney’s fees in civil court for instances of intentional harassment that occurred within the Sunnyvale City limits. The ordinance has no criminal penalties and the city would have no involvement in enforcing the ordinance.

In the opinion of OCA, the ordinance raises some legal questions related to possible preemption by state law. However, the ordinance is not clearly preempted. Courts have generally upheld the ability of charter cities to create private rights of action that include attorney’s fees, penalties and enhanced damages. (See, e.g., *Rental Housing Ass’n of Northern Alameda County v. City*

*of Oakland* (2009) 171 Cal.App.4th 741.) If the ordinance is challenged, that would likely occur by a private party challenging the validity of the right of private action in the context of a private civil action. The city is not a party to these types of private actions.

In the opinion of the Department of Public Safety, an ordinance, as described and suggested by the BPAC, would not be a law that empowers or is otherwise useful for law enforcement purposes. It would be unlikely that an officer would be able to differentiate between an intentional act or a simple driving error. Additionally, in the rare occasion where a driver's intent to steer towards a bicyclist could be determined, the penal code is far more appropriate to use as an enforcement tool. The existing vehicle code covers vehicle operators violating a bicyclist's right-of-way and will continue to be enforced by the Department of Public Safety. There is the likelihood that cyclists will expect Public Safety enforcement as a result of this ordinance. Creating an unreasonable expectation is always problematic.

The ordinance, as proposed, would create a right of civil action. The burden of proof would fall on the aggrieved party rather than law enforcement personnel. The intent of this ordinance is to provide a means of remedy and restitution directly to cyclists who could meet a court's burden of proof. Staff believes that it may be as difficult for an individual cyclist as it is for the Department of Public Safety to witness and prove an intentional act of harassment. However, the burden of proof is lower than that of a criminal court. Some sort of proof of an intentional act would still need to be provided.

#### Bicycle and Pedestrian Advisory Commission Recommendation

The Bicycle and Pedestrian Advisory Commission (BPAC) reviewed this item at their May 17, 2012 meeting. The BPAC voted 5-1, Commissioner Rausch opposed, to support the staff recommendation, with editorial changes to the Report in Brief of this Report to Council to clarify the adoption of this ordinance would not preclude pursuit of remedy for harassment through the criminal court system (Attachment C – BPAC Meeting Minutes).

#### **FISCAL IMPACT**

There is no fiscal impact from adopting the ordinance.

#### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin boards outside City Hall, in the Council Chambers lobby, the City Clerk's office, at the Library, Senior Center, Community Center, and Department of Public Safety; posting the agenda and report on the City's Web site; and making the report available at the Office of the City Clerk.

The Bicycle and Pedestrian Advisory Commission considered this item at their May 17, 2012 meeting during the Public Hearing session.

**ALTERNATIVES**

1. Introduce the attached ordinance (Attachment B) adopting a bicyclist anti-harassment ordinance.
2. Do not take action at this time.

**RECOMMENDATION**

Staff recommends Alternative No. 1, introduce the attached ordinance (Attachment B) adopting a bicyclist anti-harassment ordinance.

Introduction of a Bicyclist Anti-Harassment Ordinance provides a potential remedy for cyclists who are harassed while riding. While it may face a difficult burden of proof in a court of law, it is one approach available to potentially address cases of harassment, and discourage harassment.

Reviewed by:

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Kent Steffens, Director of Public Works  
Prepared by: Jack Witthaus, Transportation and Traffic Manager

Approved by:

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Gary M. Luebbers, City Manager

**Attachment:**

- A. Copy of Study Issue DPW 12-01 Bicyclist Anti-Harassment Ordinance
- B. Ordinance
- C. Draft BPAC Meeting Minutes of May 17, 2012

# **ATTACHMENT A**

## 2012 Council Study Issue

**DPW 12-01 Bicyclist Anti-Harrassment Ordinance****Lead Department** Public Works**History** 1 year ago None 2 years ago None**1. What are the key elements of the issue? What precipitated it?**

This issue was brought to the BPAC by a citizen who suggested, and the BPAC approved, that the City consider adoption of a bicyclist anti-harrassment ordinance modeled after the City of Los Angeles' recently adopted ordinance. A bicyclist anti-harrassment ordinance would make it unlawful to intentionally force or attempt to force a bicyclist from a roadway with the intent to injure or distract the bicyclist simply because they are bicycling. It would subject violators to liability for damages, fees, and litigation costs. Existing civil and criminal laws are viewed by some as difficult to enforce and lacking specificity and teeth on the issue of motorists and others not allowing bicyclists their rightful use of the road. This ordinance would provide a clear law with civil penalties. Bicyclists would be able to pursue remedy and restitution including punitive damages for intentional harassment in civil court.

**2. How does this relate to the General Plan or existing City Policy?**

Law Enforcement Sub-Element Policy A.5, Facilitate the safe movement of pedestrians, bicyclists, and vehicles.

**3. Origin of issue****Board or Commission** Bicycle and Pedestrian Advisory Commission**4. Staff effort required to conduct study** Minor**Briefly explain the level of staff effort required**

The City of Los Angeles has adopted an ordinance that would be used as a model. Staff would need to assess the proposed model ordinance and identify any potential issues before presenting it to Council for consideration.

**5. Multiple Year Project?** No **Planned Completion Year** 2012**6. Expected participation involved in the study issue process?****Does Council need to approve a work plan?** No**Does this issue require review by a Board/Commission?** Yes**If so, which?** Bicycle and Pedestrian Advisory  
Commission**Is a Council Study Session anticipated?** No**7. Briefly explain if a budget modification will be required to study this issue****Amount of budget modification required** 0**Explanation**

ATTACHMENT A

**8. Briefly explain potential costs of implementing study results, note estimated capital and operating costs, as well as estimated revenue/savings, include dollar amounts**

**Are there costs of implementation?** No

**Explanation**

Upon implementation the ordinance would become a citeable offense that could be used by the Department of Public Safety to address harrassment of bicyclists and improve safe bicycle travel.

**9. Staff Recommendation**

**Staff Recommendation** Drop

**If 'Support', 'Drop' or 'Defer', explain**

In the opinion of the Department of Public Safety, an ordinance, as described and suggested by the BPAC, would be virtually unenforcible. It would be unlikely that an officer would be able to differentiate between an intentional act or a simple driving error. Additionally, in the rare occasion where a drivers intent to steer towards a bicyclist could be determined, the penal code is far more appropriate to use as an enforcement tool. The vehicle code would cover simple driving errors that violate a bicyclist right of way.

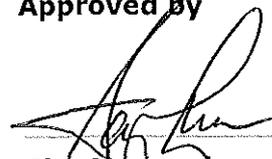
Being a civil statute, this ordinance would potentially provide a means of remedy and restitution directly to cyclists who could meet a court's burden of proof, but staff believes that it would be as difficult for an individual cyclist as it is for the Department of Public Safety to witness and prove an intentional act of harassment. The burden of proof is lower than that of a criminal court, but some sort of proof of an intentional act would still need to be provided.

**Reviewed by**

  
Department Director

11-10-11  
Date

**Approved by**

  
City Manager

11-10-11  
Date

# **ATTACHMENT B**

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE AMENDING CHAPTER 10.56 (BICYCLES) OF TITLE 10 (VEHICLES AND TRAFFIC) OF THE SUNNYVALE MUNICIPAL CODE RELATING TO BICYCLISTS**

WHEREAS, the City of Sunnyvale wants to encourage people to ride bicycles rather than drive motor vehicles in order to lessen traffic congestion and improve air quality; and

WHEREAS, harassment of bicyclists on the basis of their status as bicyclists exists; and

WHEREAS, riding a bicycle on City streets poses hazards to bicyclists, and these hazards are amplified by the actions of persons who deliberately harass and endanger bicyclists because of their status as bicyclists; and

WHEREAS, because people have a right to ride a bicycle in the City of Sunnyvale and should be able to do so safely on City streets, it is against the public policy of the City of Sunnyvale to harass a bicyclist upon the basis of the person's status as bicyclists;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

SECTION 1. SECTION 10.56.010 AMENDED. Section 10.56.010 of Chapter 10.56 (Bicycles) of Title 10 (Vehicles and Traffic) of the Sunnyvale Municipal Code is hereby amended to read as follows:

**10.56.010. Definitions.**

For the purpose of this chapter, the word "bicycle" shall have the same meaning as that term is defined in the Vehicle Code Section 231 as the same exists or may be amended hereafter. A "bicyclist" is a person riding a bicycle. References to the "chief of public safety" means the chief or the chief's designee.

SECTION 2. SECTION 10.56.320 ADDED. Section 10.56.320 of Chapter 10.56 (Bicycles) of Title 10 (Vehicles and Traffic) of the Sunnyvale Municipal Code is hereby added to read as follows:

**10.56.320. Prohibition against harassment of bicyclists.**

- (a) A person shall not do or attempt to do any of the following:
- (1) Physically assault or attempt to physically assault a bicyclist because of, in whole or in part, the bicyclist's status as a bicyclist.
  - (2) Threaten to physically injure a bicyclist because of, in whole or in part, the bicyclist's status as a bicyclist.

(3) Intentionally injure, attempt to injure, or threaten to physically injure, either by words, vehicle, or other object, a bicyclist because of, in whole or in part, the bicyclist's status as a bicyclist.

(4) Intentionally distract or attempt to distract a bicyclist because of, in whole or in part, the bicyclist's status as a bicyclist.

(5) Intentionally force or attempt to force a bicyclist off a street for purposes unrelated to public safety.

(b) Remedies

(1) Any aggrieved person may enforce the provisions of this section by means of a civil lawsuit.

(2) Any person who violates the provisions of this section shall be liable for treble the actual damages with regard to each and every such violation, or \$1,000, whichever is greater, and shall be liable for reasonable attorneys' fees and costs of litigation. In addition, a jury or court may award punitive damages where warranted.

(3) Notwithstanding section 1.04.010 of this code, violations of any of the provisions of this section shall not constitute a misdemeanor or infraction, except where such actions, independently of this section, constitute a misdemeanor or infraction.

(4) The remedies provided by the provisions of this section are in addition to all other remedies provided by law, and nothing in this section shall preclude any aggrieved person from pursuing any other remedy provided by law.

**SECTION 3. EXEMPTION FROM CEQA.** The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15378(b)(4), and that this ordinance is not a project and thus, not subject to the requirements of the California Environmental Quality Act (CEQA).

**SECTION 4. CONSTITUTIONALITY; SEVERABILITY.** If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision or decisions shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

**SECTION 5. EFFECTIVE DATE.** This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

**SECTION 6. POSTING AND PUBLICATION.** The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in The Sun, the official publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on \_\_\_\_\_, 2012, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on \_\_\_\_\_, 2012, by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

ATTEST:

APPROVED:

\_\_\_\_\_  
City Clerk  
Date of Attestation: \_\_\_\_\_

\_\_\_\_\_  
Mayor

SEAL

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
David E. Kahn, City Attorney

# **ATTACHMENT C**



DRAFT

**SUNNYVALE BICYCLE AND PEDESTRIAN ADVISORY COMMISSION  
Meeting Minutes – May 17, 2012**

The Sunnyvale Bicycle and Pedestrian Advisory Commission met at 6:30 p.m. on May 17, 2012 with Commission Chair Ralph Durham presiding. The meeting was held in the West Conference Room, City Hall, 456 West Olive Avenue, Sunnyvale.

**ROLL CALL/CONSIDERATION OF ABSENCES**

**Members Present:** Cathy Switzer  
David Gandrud  
James Manidakos  
Ralph Durham  
Angela Rausch  
Andrea Stawitcke

**Members Absent:** None.

**Council Liaison Present:** Chris Moylan

**Staff Present:** Jack Witthaus, Transportation and Traffic Division Manager, Department of Public Works  
Christy Gunvalsen, Neighborhood Preservation Manager, Department of Public Safety

**Visitors:** Anthony Spitaleri, Mayor  
Kevin Jackson, Horizon 2035 Committee member  
David Simons, VTA BPAC Representative  
Kimberly Hubble  
Tammy Reed  
Dave Jones  
Patrick Grant  
Richard Kolber  
Unknown citizen

**SCHEDULED PRESENTATIONS**

Recognition of Departing Bicycle and Pedestrian Advisory Commission Members

Mayor Spitaleri and Council Liaison Moylan presented Certificates of Achievement to departing BPAC members Ralph Durham and Andrea Stawitcke, and praised them for their service.

Neighborhood Preservation Division – Vision Triangle Enforcement

Neighborhood Preservation Manager Gunvalsen gave an overview of the Neighborhood Preservation Division's code enforcement procedures and activities, and answered questions from

the BPAC. The Chair recognized VTA BPAC Representative Simons and Horizon 2035 Committee member Jackson, who asked questions.

### **PUBLIC ANNOUNCEMENTS**

*(Speakers are limited to 3 minutes for announcements of related board/commission events, programs, resignations, recognitions, acknowledgments)*

Kevin Jackson announced reduced membership fees for joining the Silicon Valley Bicycle Coalition in the month of May. He summarized the status of SB 1464, a bill to consider minimum passing distances from bicycles. He presented his experience fitting bicycle helmets at the City's Fit and Fun Fair. He announced a Family Fun bike ride at Ponderosa Park on May 19, and a Family Fun Bike Night at Vargas School on May 21. He announced the scheduled grand opening of the Highway 85/Dale-Heatherstone bicycle bridge on June 23.

### **CONSENT CALENDAR**

- 1.A) Approval of the Draft Minutes of April 19, 2012 Meeting
- 1.B) Updated 2012 BPAC Calendar

Items 1.A was pulled by Commissioner Stawitcke and 1.B was pulled from the consent calendar by Vice-Chair Manidakos.

- 1.A) Approval of the Draft Minutes of April 19, 2012 Meeting

Commissioner Statwitcke noted on Page 5 that the reference to Commissioner Statwitcke under the Non-Agenda Items and Comments should refer to Commissioner Switzer. Vice-Chair Manidakos noted under the VTA BPAC Appointment item that he had requested that the Commission consider criteria or guidelines for a VTA BPAC appointment in July. Commissioner Gandrud asked that his comments under Non-Agenda Items and Comments regarding a Bus Rapid Transit meeting should state that he found questions asked at the meeting to be excellent and insightful.

The Chair opened the public hearing. Kevin Jackson noted that Grace Sun's comments had also referenced accessory dwelling units being constructed on Pastoria Avenue. He clarified his comments under the Study Issues item to state that donation of property is proposed for providing off-street parking, not bicycle and pedestrian facilities, and that he believes the City should determine a threshold for accommodating vehicles on private property based on a reasoned determination of want of vehicles versus need for vehicles.

Motion by Switzer, second Manidakos, to approve the minutes as amended, 5-0-1, Stawitcke abstaining due to absence at the April meeting.

- 1.B) Updated 2012 BPAC Calendar

Vice-Chair Manidakos asked that the calendar be amended for the Commission to consider criteria or guidelines for a VTA BPAC appointment in July.

Motion to approve the Updated 2012 BPAC Calendar by Stawitcke, second Switzer, to approve Item 1.B as amended.

By order of the Chair, the Commission adjourned at 7:10 P.M. to enjoy treats provided to celebrate outgoing members' terms. The meeting was resumed at 7:20 P.M.

### **PUBLIC COMMENTS**

*This category is limited to 15 minutes, with a maximum of three minutes per speaker. If you wish to address the board or commission, please complete a speaker card and give it to the Recording Secretary or you may orally make a request to speak. If your subject is not on the agenda, you will be recognized at this time; but the Brown Act (Open Meeting Law) does not allow action by board or commission members. If you wish to speak to a subject listed on the agenda, you will be recognized at the time the item is being considered by the board or commission.*

A citizen requested information on when the Pastoria Avenue bike lanes issue would move forward.

Tammy Reed presented information on her personal observations of the volume of parked vehicles on Pastoria Avenue. She stated that there are lots of homes with second units and insufficient off-street parking, and that families with high school age drivers often must have at least three vehicles. She stated that she believes a City street tree in front of her home is in need of trimming.

### **PUBLIC HEARINGS/GENERAL BUSINESS**

#### 4. ACTION: Bicyclist Anti-Harassment Ordinance – Study Issue

Staff gave a brief report. Commissioner Gandrud asked that clarifying language be added to the Report in Brief section of the Report to Council to state that the proposed ordinance does not preclude pursuit of remedy through the criminal court system. There was discussion of criminal versus civil law approaches.

The public hearing was opened. Richard Kolber inquired as to whether the ordinance would apply to an incident that he had encountered. Kevin Jackson stated that he believed language in the Report stating that the ordinance could create a misconception that the City would provide enforcement or other resources was counter to the intent of the ordinance. He believes the ordinance will raise attention and improve understanding of the law in general regarding safe driving around bicyclists. Patrick Grant presented concerns with the effectiveness of current law enforcement, and stated that the ordinance is needed to augment or provide another potentially more effective remedy than criminal enforcement. David Simons stated that he believes the ordinance is needed.

The public hearing was closed. The Commission discussed whether to recommend amendment of the ordinance to include specific examples of harassment.

Motion by Gandrud, second Stawitcke, to recommend approval of the staff recommendation to approve a bicyclist anti-harassment ordinance, and request clarification in the text of the Report to Council that the ordinance does not preclude actions by an individual in criminal court. Motion approved 5-1, Rausch opposed.

## 5. ACTION: Review of the Proposed Two Year Budget

Staff gave a brief report. Commissioners inquired about potential projects and schedules for budgeted projects.

The public hearing was opened. Kevin Jackson commented on Pastoria Avenue and Route 101/237/Mathilda projects. The public hearing was closed.

Motion by Stawitcke, second by Manidakos, to support approval of those portions of the budget presented to the BPAC with regard to bicycle and pedestrian services and projects, and to encourage Stevens Creek Trail funding and provision of dogs on leashes signs to improve bicycle and pedestrian safety in parks. Motion approved, 6-0.

### **NON-AGENDA ITEMS AND COMMENTS**

- COMMISSIONERS ORAL COMMENTS

In response to an inquiry from Commissioner Switzer on a recent Council Committee recommendation for adjustment of terms for BPAC members, Council Liaison Moylan responded that the Council had approved at it's May 15 meeting a revision to BPAC member terms.

Vice-Chair Manidakos presented information on a recent hearing by the VTA BPAC on proposed changes to Caltrans standards for centerline rumble strips.

Chair Durham requested that staff distribute his acronym list to new BPAC members.

- STAFF ORAL COMMENTS

Staff announced that the City has been re-designated a Bicycle Friendly Community by the national League of American Bicyclists. A ceremonial sign was presented to Chair Durham.

### **INFORMATION ONLY ITEMS**

1. Bike to Work Day Report Out
2. BPAC E-mail messages and/or letters since circulation of the agenda packet of the April 19, 2012 meeting.
3. BPAC Active Items List

The Commission discussed the status of recruitment for open BPAC positions, and an issue with bakfiets cargo bicycles.

### **ADJOURNMENT**

Meeting adjourned at 8:40 p.m.

Respectfully submitted by:

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Jack Witthaus  
Transportation and Traffic Manager