ATTACHMENT B

REPORT TO MAYOR AND COUNCIL

NO: _____

Draft for Bicycle and Pedestrian Advisory Commission review on April 19, 2012

Council Meeting: May 22, 2012

SUBJECT: Introduce a Bicyclist Anti-Harassment Ordinance – STUDY ISSUE DPW 12-01

REPORT IN BRIEF

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 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. Council is being asked to adopt this ordinance providing a clear law with civil penalties. Bicyclists would be able to pursue remedy and restitution including punitive damages for intentional harassment in civil court.

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 vehicle code would cover vehicle operators violating a bicyclist's right-of-way. Therefore 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.

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.

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:

_____

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

Approved by:

_____

Gary M. Luebbers, City Manager

Attachment:

A. Copy of Study Issue DPW 12-01 Bicyclist Anti-Harassment Ordinance
B. Ordinance

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

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		Approved by	
_____	_____	_____	_____
Department Director	**Date**	**City Manager**	**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 form 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:

ATTACHMENT B

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

Request	20763	**Status**	**Closed**
Assigned To	jwitthaus	**Priority, Contact**	Regular WebForm
From	Radostin Simitev <radostin.simitev@googlemail.com>	**Receive Date**	04-06-12 7:46 pm
To AP	BPAC <jwitthaus@ci.sunnyvale.ca.us>	**Reply Needed**	**Yes**
Subject	Please send me a BIKE MAP	**Close Date**	04-09-12 8:33 am

Message Dear All, Would you please, send me a Bicycle map of Sunnyvale and surroundings (Santa Clara). Please, post to Radostin Simitev Solar Physics Project Stanford University 452 Lomita Mall, #130 Stanford CA 94305-4085 Many thanks!

Actions

Action	ReplyClosed
Date	04-09-12 8:33 am
From	jwitthaus@ci.sunnyvale.ca.us - BPAC
To	radostin.simitev@googlemail.com -
cc	fmoralez@ci.sunnyvale.ca.us
Subject	Re: Please send me a BIKE MAP
Message	Dear Radostin Simitev, A map will be mailed to you. Thank you very much for your inquiry. Thank you, Jack Witthaus BPAC jwitthaus@ci.sunnyvale.ca.us

Ratings

Request	20776	**Status**	Closed
Assigned To	JWitthaus	**Priority, Contact**	Regular WebForm
From	Jackie Zoucha <jackiezoucha@yahoo.com>	**Receive Date**	04-08-12 6:35 pm
To AP	Public works <pubworks@ci.sunnyvale.ca.us>	**Reply Needed**	Yes
Subject	Crosswalk safety at Fremont Ave. and Sydney Drive	**Close Date**	04-11-12 8:49 am
Regarding Location	Fremont Ave. and Sydney Drive		

Message My daughter (a junior at Fremont High School) was hit by a low-speed car in the cross walk at Fremont Ave. and Sydney Drive in Sunnyvale on March 23, 2012. The car appeared to be stopping, and then the driver (over 80 years old) decided to speed up to get past, and he hit her. The response from the school and the emergency personnel was very fast and professional. Luckily she only has bruises and scratches, and the driver was given a ticket plus DMV review. However, it seems this crosswalk is quite unsafe, and an upgrade with flashing lights which a pedestrian can activate are a really good idea. My daughter has been crossing there for 2.5 years, and so she knows what to expect from most drivers in terms of eye contact and whether they are stopping. But there is always the driver that thinks and acts differently, and students are not always careful enough. I would like to request the council to consider upgrading this cross walk with safety improvements.

Actions

Action Reassign
Date 04-09-12 9:14 am
From Heidi Kirk - Council
To Rosalie Brooks - Public safety
Subject Web Request - Reassign 20776 from: Heidi Kirk to: RBrooks, subject: Crosswalk safety at Fremont Ave
Message Forwarding from Council AnswerPoint.

Action Reassign
Date 04-09-12 10:24 am
From Rosalie Brooks - Public safety
To Frances Moralez - Public works
Subject Web Request - Reassign 20776 from: Rosalie Brooks to: FMoralez, subject: Crosswalk safety at Fremon
Message

Action Reassign
Date 04-09-12 1:31 pm
From Frances Moralez - Public works
To Jack Witthaus - Public works
bc ksteffens@ci.sunnyvale.ca.us
Subject Web Request - Reassign 20776 from: Frances Moralez to: JWitthaus, subject: Crosswalk safety at Frem
Message Hi Jack,

Please respond to the customer.

Thanks,

Frances

Action ReplyClosed
Date 04-11-12 8:49 am
From pubworks@ci.sunnyvale.ca.us - Public works
To jackiezoucha@yahoo.com -
cc nfakih@ci.sunnyvale.ca.us, fmoralez@ci.sunnyvale.ca.us
bc ksteffens@ci.sunnyvale.ca.us
Subject Re: Crosswalk safety at Fremont Ave. and Sydney Drive
Message Dear Jackie Zoucha,

Thank you for relaying your concerns to the City. The City will be making improvements to this crosswalk to implement warning lights and high visibility signs and markings. Design is 99% completed. The consultant is performing additional design and finalizing the bid documents. Advertising date is scheduled on May 11, bid opening will be on June 6. Council would consider award of contract in late June. Construction will start in August, 2012 and be completed by the end of the year. If you have any questions on the status of this project, please contact Nasser Fakih at (408)730-7617.

Request	20818	**Status**	**Closed**
Assigned To	jwitthaus	**Priority, Contact**	Regular WebForm
From	Jeff Roloff <jjroloff@gmail.com> 217-419-6079	**Receive Date**	04-12-12 7:41 pm
To AP	BPAC <jwitthaus@ci.sunnyvale.ca.us>	**Reply Needed**	**Yes**
Subject	Traffic sensor no longer sensing bicycles	**Close Date**	04-13-12 8:33 am
Regarding Location	Stoplight at corner of Mary and California		

Message

Hi, I'm a daily bike commuter in Sunnyvale, and on my commute home I often need to cross Mary while on California to head downtown. I stop over the traffic sensor for the "straight ahead" (no turn) lane, on the Buena Vista side of the intersection. It used to be that the sensor would notice my bike, and I would get a green light in due course. Lately it does not sense my bike, and I have to go press the pedestrian cross walk button. That makes traffic on Mary stop for 30+ seconds, when I just need a fraction of that to cross the street and head downtown on California. It would be great if this could be fixed, both for me, but especially for motorists, as they would spend less time stopped at an intersection which usually has no traffic passing after the first 10 seconds of their 30 second red light.

Actions

Action	ReplyClosed
Date	04-13-12 8:33 am
From	jwitthaus@ci.sunnyvale.ca.us - BPAC
To	jjroloff@gmail.com -
cc	fmoralez@ci.sunnyvale.ca.us
Subject	Re: Traffic sensor no longer sensing bicycles
Message	Dear Jeff Roloff,

Thank you very much for notifying the City of this condition. We will dispatch an engineer today to check the location and make repairs as necessary. We very much appreciate you notifying us of this issue.

Thank you,
Jack Witthaus
BPAC
jwitthaus@ci.sunnyvale.ca.us

Ratings

Bicycle and Pedestrian Advisory Commission

Active Items List - Attachment D

Item #	Item	OPR	Due Date (Approx)	Status	Last Updated
1	Bernardo Caltrain Under-crossing	Witthaus	TBD	Feasibility Study accepted by the City Council. Funds for 20% local matching funds must be identified before further project initiation. BEP Tier 1 update submitted. VTA will program 80% funds out to 2016 to allow for time to secure matching funds. Project update submitted for Valley Transportation Plan (VTP) 2035 consideration.	4/9/2009
2	Code of Ethics and Conduct	Witthaus	Annual	Agendized for review by BPAC during the meeting of January 19th, 2012.	1/1/2012
3	Utility Bill Insert	Witthaus	Annual	2012 concept ideas developed at the February, 2012 BPAC meeting, draft concept agendized for April 19 meeting.	4/11//2012
4	Bike to Work Day	Witthaus	Annual	Staff support to be provided for 2012 BTWD, two energizer stations..	4/11/2012
5	Earth Day	Witthaus	Annual	Pending for 2012	1/1/2012
6	Fit and Fun Fair	Witthaus	Annual	Scheduled for May 5, 2012 at Columbia Middle School, 11AM to 3PM. Bike safety tune ups to be provided, possibly helmet giveaway.	4/14/2012
7	Road Overlay, Slurry, Reconstruction & Chip Schedule	T. Pineda	Annual	Transmitted at the January, 2012 BPAC meeting	3/7/2012
8	Signage request - Entrance of Baylands Park	Witthaus	5/12/2012	Work order prepared.	3/7/2012
9	State of the City	Pilger	Annual	Pending for 2012	1/1/2012

ATTACHMENT D

Item #	Item	OPR	Due Date (Approx)	Status	Last Updated
10	VTA Bicycle Expenditure Program (BEP)	Witthaus	Annual	TFCA Program Manager call for projects circulated, Mathilda Avenue bike lane project from Maude Avenue to California Avenue and Wildwood Avenue bike lanes projects submitted and recommended for funding.	4/11/2012
11	Block Grants	Witthaus	Annual	Hendy Avenue between Fair Oaks and Sunnyvale Avenues sidewalks, bike lanes, underground utilities, and other improvements at 60% design. Left-turn, signal and pedestrian improvements at the intersection of Old San Francisco Road/Sunnyvale Avenue 60% design.	1/1/2012
12	Construction Zone Safety Complaints received	Witthaus	Ongoing	No complaints received	4/11/2012
13	Bicycle Detection Complaints received	Witthaus	Ongoing	No complaints received	4/11/2012
14	Community Design and Transportation (CDT) - Planning Grant Program	El-Guendy	Annual	Feasibility study/concept plan for the West Channel Trail corridor capital project approved by Council.	1/1/2012
15	2011/12 Transportation Planning Grant Funds	Witthaus	Annual	Call for projects released, due April, 2012	1/1/2012
16	Safe Routes to Schools Projects	Fakih	Annual	Cycle 10 project at 99% design, public meetings being held with affected property owners. City awarded $ 820,000 in Safe Route funding, Council approved project in December, 2011. A non-infrastructure application for the Cities of Sunnyvale and Campbell was submitted under TSCN of the County's Health Department and approved for funding.	4/11/2012

Item #	Item	OPR	Due Date (Approx)	Status	Last Updated
17	2010 Community Design and Transportation (CDT) - Capital Grant Program	Fakih	Annual	East Channel Trail project determined to require coordination with Water District flood control improvements. Timing of grant funds would not allow construction. Funds shifted to Downtown Streetscape Project to improve sidewalk and other streetscape features on Iowa Avenue.	1/1/2012
18	Establishment of Bike Lanes on Mary Avenue	Witthaus	Ongoing	Street Space Allocation Study to move forward as a stand alone project. Technical work 90% complete, interpretive and environmental studies to be completed.	3/7/2012
19	Vehicle Emissions Reductions Based at Schools (VERBS) Grant Program	El-Guendy	Ongoing	Teaming with the Traffic Safe Communities Network (TSCN), an application for non-infrastructure initiatives was submitted on October 4th. The project was awarded funding of $1 million excluding local match which will be split between the City of Sunnyvale and the County of Santa Clara. About 80% of Sunnyvale elementary and middle schools will be evaluated. Site coordination meetings ongoing.	1/1/2012