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REPORT NO. R10-0206
JUL 08 2010

REPORT RE:

**PREVENTION OF HARASSMENT OF BICYCLISTS
IN THE CITY OF LOS ANGELES**

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, CA 90012

Council File No. 09-2895

Honorable Members:

On January 27, 2010, your Honorable Body requested our office to prepare a report, in conjunction with the Department of Transportation (DOT), identifying actions that the City can take to prevent the harassment of bicyclists in the City, and to recommend State legislation or administrative enactments to protect bicyclists. This Report identifies safety complaints commonly asserted by bicyclists, and discusses lawful measures to address those complaints.

Common Harassing Incidents Directed at Bicyclists

The DOT worked with the bicycling community and determined that bicyclists are frequently subject to the following harassing actions: people spit at them; throw liquid and solid objects at them; verbally threaten them; drive too closely in their cars and dangerously cut in front of them; and honk automobile horns for the purpose of scaring

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them. Women bicyclists also report being physically touched by strangers while they ride and while they wait at stop lights and stop signs.

Existing Legislation Prohibiting the Harassing Actions

Many of the harassing actions about which bicyclists complain already constitute California Penal Code and Vehicle Code violations:

Spitting at a bicyclist: Spitting at a bicyclist violates Penal Code Sections 240 (Assault) and 242 (Battery).

Throwing a substance at a bicyclist: Throwing a liquid or solid substance at a bicyclist violates Penal Code Sections 240 (Assault) and 242 (Battery), and Vehicle Code Section 23110(a) (Throwing substance at a vehicle).

Threatening to injure a bicyclist: Depending on the threat, verbally threatening to injure a bicyclist may violate Penal Code Section 422 (Criminal threats).

Driving an automobile too closely to a bicyclist violates Vehicle Code Section 21703 (Following too closely) and may also violate Penal Code Section 245 (Assault with a deadly weapon) and Vehicle Code Sections 23103 and 23104 (Reckless driving).

Driving a car and cutting off a bicyclist may violate Vehicle Code Sections 21658(a) (Unsafe lane change), 21750 (Passing bicycle with insufficient clearance), 21209 (Driving a motor vehicle in a bicycle lane), and may also violate Penal Code Section 245 (Assault with a deadly weapon) and Vehicle Code Sections 23103 and 23104 (Reckless driving).

Honking a horn at a bicyclist for reasons unrelated to vehicular safety violates Vehicle Code Section 27001(b) (Use of horn for other than safe operation of a vehicle).

Physically touching a bicyclist violates Penal Code Section 242 (Battery) and may also violate Penal Code Section 243.5 (Sexual battery).

Suggestions for Additional State Legislation

According to the DOT, the California Bicycle Coalition is working with the Legislature to seek legislation to protect vulnerable roadway users, including bicyclists. Once there is a bill pending that addresses the issue of protecting bicyclists, the DOT will report to Council with a recommendation whether to support the measure.

In 2006, Assembly Bill 60 was proposed to amend the Vehicle Code to require a driver of a vehicle passing a bicyclist to maintain a minimum distance of three feet between the vehicle and bicycle, but the legislation was not enacted. The Council could ask the State Assembly or Senate to re-introduce the legislation, or support the inclusion of the three feet passing requirement in legislation proposed by the California Bicycle Coalition.

City Authority to Enact Legislation

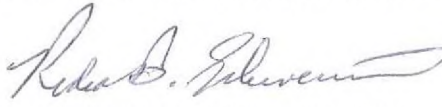
The City's authority to enact legislation regulating rules of the road with respect to automobiles and bicyclists is extremely limited. The California Vehicle Code states at Section 21 that the Code's provisions are applicable and uniform throughout the State and that "no local authority shall enact or enforce any ordinance on the matters covered by this code, unless expressly authorized" in the Code. The Vehicle Code regulates the rules of the road for automobiles and bicyclists, including the use of automobile horns, and the City cannot enact additional legislation on those matters.

We understand that a significant problem for bicyclists is not a lack of legislation prohibiting harassing acts, but is the difficulty in obtaining enforcement of the laws. To address this problem, we believe that the City could enact an ordinance making it a civil violation of the Los Angeles Municipal Code for anyone to discriminate against a bicyclist by unlawfully assaulting, threatening, or harassing a bicyclist, and create a private cause of action with attorneys' fees for a violation. This would allow bicyclists to seek redress for harassment in situations where the police or other enforcement personnel do not witness the harassment, or where there is insufficient evidence to warrant a criminal filing.

If you have any questions regarding this matter, please contact Deputy City Attorney Judith Reel at (213) 978-7191. She or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

CARMEN A. TRUTANICH, City Attorney

By 

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