



MEMORANDUM

To: Brian Manly, Assistant Chief
Austin Police Department

From: Stevie Greathouse, Principal Planner (on behalf of Carol Haywood, Division Manager)
Planning and Development Review, Comprehensive Planning Division

CC: **Distracted Driving Study Group, Carol Haywood**

Date: July 18, 2014

Subject: Distracted Driving Study Group Recommendations

This memorandum is to share research with the Distracted Driving Study Group as they undertake to modify existing City ordinances pertaining to distracted driving.

In response to a City staff presentation on distracted driving at the Council Comprehensive Plan and Transportation Committee on January 13, 2014, City Council passed Resolution No. 20140227-045 directing the City Manager to form a Distracted Driving Study Group. The charge of the study group is to evaluate amending existing City of Austin Ordinance Nos. 20091022-028 and 20091217-090. These ordinances regulate the use of cell phones and other wireless communication devices while operating a motor vehicle, prohibiting texting and any other activities with exceptions for engaging in phone calls or operating the device in a hands-free mode. Since the 2009 adoption of the city's ordinances, however, issues have been noted regarding enforcement, evolution in technology, and lessons learned from widespread adoption of distracted driving bans by other cities and states.

The Comprehensive Planning Division of the Planning and Development Review Department wish to thank the staff and members of the Distracted Driving Study Group for their commitment to making Austinites safer. We advise that recommendations submitted to City Council be consistent with existing city policies and be supported by best practices and research supporting the efficacy of such actions. Therefore, we submit the following attachment, "Research and Findings in Support of Excluding Bicyclists and Pedestrians from Distracted Driving Ordinance". The main points are:

- Efforts to expand the distracted driving ordinance should remain focused on motorists;
- Expanding the ordinance to motorists improves public safety;
- Applying a distracted driving ordinance to pedestrians and bicyclists is not supported by

- research and can undermine efforts to encourage non-motorized transportation;
- Applying the distracted driving ordinance to pedestrians and bicyclists presents legal questions that have not been explored; and
 - More research is needed nationally and locally to establish the nature and extent of distracted walking and distracted bicycling, and what program or policy solutions would be appropriate.

Thank you for your consideration. If you have questions, you may contact Carol Haywood, myself, or PDRD staff participating on the Distracted Driving Study Group.

Research and Findings in Support of Excluding Bicyclists and Pedestrians from Distracted Driving Ordinance

Working towards *Imagine Austin*

Imagine Austin presents a clear vision for the future of the city: an Austin that is more walkable and bikeable, more compact and connected, and more people-friendly. A distracted driving ordinance can help to achieve that vision by making roads safer for all users. If, however, the distracted driving recommendations made by the Distracted Driving Study Group are expanded to include bicycling and walking, it could deter people from choosing those modes and undermine this vision.

Safety first

Safety in numbers is one of the best ways to improve the safety of walking or bicycling. Jacobsen (2003) demonstrates that the likelihood of being hit while walking or biking is inversely related to the number of people who walk or bike. In other words, as more people walk or bike, the safety for those modes. He concludes, “Policies that increase the numbers of people walking and bicycling appear to be an effective route to improving the safety of people walking and bicycling.” This is reflected in the emerging injury data for cities that have implemented bike share (Teschke, as cited in Jaffe, 2014). Any additional regulations that deter people from walking or biking could undermine any gains in safety a distracted driving ordinance would provide, as well as run counter to the community’s vision for the future of Austin, articulated in *Imagine Austin*.

Fairness

Some within the Study Group have raised concerns about the fairness of an ordinance that singles out users of one mode (drivers) over others (bicyclists and pedestrians). The argument is that all road users should be subject to the same laws, regardless of mode. On its face, this appears to be a reasonable argument. However, the existing national data doesn’t support this approach.

The research on distracted driving is clear: along with alcohol and speeding, distracted driving is a leading factor in fatal and serious injury crashes (National Safety Council, April 2012). According to the National Highway Traffic Safety Administration, cell phone use is the most common driver distractor and the most common cause of vehicle crashes (Klauer et al. as cited in Nasar et al., 2013). In addition, distracted driving kills or injures disproportionately more pedestrians and bicyclists than other motorists (Stimpson, 2013). While the fatality rate for drivers involved in distracted driving related crashes is declining due to increasingly safer vehicles, the fatality rate among the more vulnerable road users (bicyclists and pedestrians) is growing (ibid). Therefore, it seems appropriate that motorists, who have the greatest capacity to cause injury and who are least at risk of being injured, should bear increased responsibility to ensure the roadway is safe for everyone. Any future ordinance applying to pedestrians and bicyclists – should future evidence point to a need – should consider the differential risks of behaviors by users of each travel mode.

In addition, hands-free devices do not eliminate cognitive distraction (National Safety Council, April 2012; Nasar et al. 2008). From a public safety standpoint, research supports a stricter ban than the strictly hands-free recommendations being forwarded by the Distracted Driving Study Group. Expanding the scope of recommendations to include use of electronic devices by drivers is a greater boon for public safety than is applying a hands-free ordinance universally to all transportation users.

A personal safety issue, not a transportation problem

Unlike extensive research which shows distracted driving is a serious threat to public safety, the data on distracted walking or bicycling is scarce (Hatfield et al., 2007). Nasar et al. shows that while rates of distracted walking are increasing along with rates of distracted driving—positively correlated with widespread mobile phone use—the research to date does not show that distracted walking has led to an increase in auto-pedestrian collisions (Neider et al., 2010). On the contrary, Nasar et al. found that even though pedestrians talking on phones were more distracted than those not engaged in a phone conversation, only a few of the pedestrians in the study exhibited unsafe behaviors as determined by the researchers. Nasar et al. caution against generalizing their results and call for additional studies. In the street crossing simulation used by Neider et al., the researchers actually found that participants listening to an iPod had a higher crossing success rate than undistracted pedestrians.

A recent study by Smith et al. (2013) corroborated Nasar’s finding that distracted walking, in general, is on the rise. In their review of hospital visits recorded in the National Electronic Injury Surveillance System (NEISS) database, however, the authors found that the vast majority of injuries resulting from distracted walking were falls (including falls within the home), followed by walking into stationary objects. Injuries resulting from auto-pedestrian collisions comprised the fewest number of cases.

Some concerns have been raised about distracted pedestrians stepping into traffic or otherwise entering the roadway when they don’t have the right-of-way. The existing research indicates that the prevalence of this is overstated (Nasar et al.; Smith et al.), but more importantly, these actions are already covered by existing State laws such as jaywalking and failure to obey a traffic control device (Texas Statutes). While still a personal safety issue, distracted walking and bicycling are dwarfed by distracted driving both in degree and severity. People on bicycles or on foot have a limited capacity to cause injury and are most at risk of being injured.

Complicating matters: legal issues

A distracted driving ordinance that includes pedestrians also raises some legal questions. Take the following hypothetical scenario: a person crossing the street in a crosswalk with the walk signal is hit by a driver who has failed to yield the right-of-way. Here the proximate cause, or the cause that led to the accident, is that the driver failed to yield to the pedestrian. To determine proximate cause, the law uses the “but for” test. In this case, “but for” the driver failing to yield, the accident would not have happened.

How does the above scenario change if the pedestrian in the crosswalk is texting? Is it proper that the pedestrian texting in the crosswalk assume the negligence of the driver who failed to yield and to, therefore, legally share fault? Using the “but for test: “but for” the pedestrian

texting, the accident may still have happened. It's a matter of whether the pedestrian recognized the danger of the vehicle failing to yield and had enough time and the ability to get out of the way. As this example illustrates, further discussion of the legal implications is necessary to ensure that the ordinance doesn't undermine existing laws governing the roadway.

A better approach to improving safety

First and foremost, we recommend focusing the City's energy on addressing dangerous behaviors that have the potential to cause the most fatalities and injuries; a distracted driving ordinance focused on drivers meets this criteria.

As stated earlier, national data on distracted walking or bicycling is scarce. Therefore, to better identify and address the factors involved in traffic injuries and deaths, more robust local data is needed, including the context of bicycle and pedestrian injuries or fatalities in Austin. Currently, Austin Police Department collects accident data using Texas Department of Transportation's required Texas Peace Officer's Crash Report. The form includes information such as whether an accident occurred at an intersection, roadway conditions (number of lanes, etc.), weather conditions, traffic control features such as stop signs and crosswalks, alcohol or drug impairment, injuries or deaths, contributing factors (such as distraction in vehicle and driver inattention (but notably no codes pertaining to pedestrian or bicycle distraction), and an opportunity for narrative explaining the accident. Refinements in the quantity and quality of reporting of bicycle and pedestrian injury and fatality data are needed to better understand the extent of the safety issue as well as to determine points of intervention. The following data would help to inform a future conversation on distracted bicycling or walking:

- Are one or both parties impaired?
- Are one or both parties distracted?
- Who is deemed at fault?
- Time of collision? (Night vs. day)
- Location? (geographic, including whether incident occurred on a sidewalk, in a crosswalk, at an uncontrolled intersection, midblock, etc.)

Before including bicyclists and pedestrians in a distracted ordinance, we must first understand the nature and extent of distracted bicycling and walking. Amplifying data collection efforts through Austin Police Department's reporting is the first step in this process.

To address bicycling and pedestrian behavior, we suggest an educational campaign, enforcement of existing regulations, and data collection to better understand the biggest safety issues facing bicyclists and pedestrians and how to best intervene.

Summary

An ordinance that includes distracted walking obscures the true public safety concern: distracted driving disproportionately affects pedestrians and bicyclists. The national data on distracted driving clearly points to drivers as the danger, not people who are distracted while walking or biking. Given the policies in *Imagine Austin* that call for Austin to become more walkable and bikeable and given the small percentage of the traffic that are comprised of bicyclists and pedestrians, the ordinance should focus on regulating behaviors that create the greatest risk; an

ordinance that addresses distracted driving for motor vehicles falls within this aim.

Due to the lack of information on distracted walking and bicycling, we also recommend collecting additional local data to better understand if and in what ways distracted walking and bicycling is occurring on the roadway.

To effectively improve safety for all users on our road ways, a tailored multi-pronged approach is needed, not a one size fits all approach.

Sources:

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