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**M E M O R A N D U M**

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**DATE:** February 21, 2002  
**TO:** City Council Members  
**FROM:** Russell Weeks  
**RE:** Proposed Amendments to City Traffic Code  
**CC:** Cindy Gust-Jenson, Rocky Fluhart, David Dobbins, Tim Harpst,  
Mary Johnston, Dan Bergenthal

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**OPTIONS**

- Adopt the proposed ordinance.
- Do not adopt the proposed ordinance.
- Consider adopting the proposed ordinance with an amendment to section 12.52.355 titled *Negligent Operation Causing Personal Injury or Death* to include citations issued to drivers involved in accidents that cause “substantial bodily injury” as a Class B misdemeanor instead of as a civil violation.
- Consider adopting the proposed ordinance with an amendment to section 12.76.045 to specify that motorists must yield to pedestrians at intersections as well to pedestrians in marked or unmarked crosswalks. City Council Members may wish to read a letter to the City Council from the City Attorney’s Office that is included in Council Member packets before considering this option.
- Consider requesting that the Administration make amending the *Utah Code* relating to pedestrians and crosswalks a priority in its legislative efforts and/or urge the Administration to include in its on-going public information efforts the need for pedestrians to yield to automobiles when pedestrians are not in crosswalks.

**POTENTIAL MOTIONS**

- I move that the City Council adopt the proposed ordinance.
- I move that the City Council not adopt the proposed ordinance.
- I move that the City Council adopt the proposed ordinance with the following amendments: That Paragraph B of Section 12.52.355 read: “The operator of any vehicle who negligently fails to yield the right of way as required by any section of this title which failure is the direct proximate cause of *substantial bodily injury* or serious bodily injury or death by any person, whether such injured or deceased person is a pedestrian or an occupant of a vehicle, shall be deemed guilty of a Class B misdemeanor.” That Paragraph C of the same section be omitted.
- I move that the City Council adopt the proposed ordinance with the following amendments: That the title of Section 12.76.040 read: “Yielding Right-of-Way *at Intersections* and Marked or Unmarked Crosswalks – Driver and Pedestrian Duties.” That Subparagraph 1 under Paragraph A, titled “Driver Duties” read: “With regard to

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*intersections* and marked or unmarked crosswalks, vehicles shall yield the right-of-way to: (a) (i) pedestrians carrying a brightly colored flag customarily used by pedestrians in the City *about to enter intersections* or while crossing a street within a crosswalk, and (b) all other pedestrians *about to enter intersections or a marked or unmarked crosswalk*.

(Two things should be noted: (1) Council staff has no law degree, and the City Council may wish to postpone any final adoption of this particular proposed amendment until it can be discussed with the City Attorney's Office. (2) Council Members again may wish to refer to the letter from the City Attorney's Office included in Council Member packets.)

### **ISSUES DISCUSSION/BACKGROUND**

The Administration and the City Council have dealt with this proposed ordinance for about a year. As the Administration's transmittal letter says, the proposed ordinance is intended to coordinate Salt Lake City's traffic code with state law. The proposed ordinance also makes a number of housekeeping changes to make clear delineations between civil violations and criminal violations and to clarify City ordinances pertaining to drivers' and pedestrians' rights and duties to yield rights-of-way and to pedestrian control devices.

There appear to be two main issues involved in the proposed ordinance. The first issue involves Section 12.52.355 titled *Negligent Operation Causing Personal Injury or Death*.

Under the proposed revision a driver found to have negligently failed to yield the right of way to other vehicles or pedestrians and to have caused an accident that results in death or "serious bodily injury ... shall be deemed guilty of a Class B misdemeanor." A driver found to have negligently failed to yield the right of way to other vehicles or pedestrians and found to have caused an accident that results in "substantial bodily injury ... shall be deemed guilty of a civil violation."

The issue involves definitions of "serious" and "substantial" bodily injury. The proposed ordinance defines "serious bodily injury" as injuries that create or cause "permanent disfigurement, protracted loss or impairment of the function of any bodily members or organ, or creates a substantial risk of death." The proposed ordinance defines "substantial bodily injury" as injuries that do not amount to serious bodily injury but that create or cause "protracted physical pain, temporary disfigurement, or temporary loss or impairment of the function of any bodily member or organ."

A May 25, 2001, City Council staff memorandum quoted the City Attorney Office as saying that the decision to split penalties based on the degree of injuries resulting from an accident was based upon discussions among the City Attorney's Office, the City Prosecutor and the Administrative Law Judge. The City Attorney's Office said in May 2001 that final determination of whether penalties should be split between criminal and civil administration remains with the City Council. (Please see attached staff memorandum dated May 25, 2001.)

The second issue involves rights and duties of motorists and pedestrians. According to the City Attorney's Office, Section 12.76.045 titled *Yielding Right-of-Way at Marked or Unmarked Crosswalks – Driver and Pedestrian Duties* comports with Utah law on duties of motorists and pedestrians.

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The Administration has changed the language in the section of the proposed ordinance several times to meet concerns raised by previous City Council Members. (For an earlier version of the language, please see attached May 25, 2001, memorandum.) The previous City Council deferred action on the proposed ordinance until City Council Members were satisfied with the language in the section. Council staff has included a potential motion in this memorandum that may be a starting point for continued revision of the section if Council Members are not satisfied with the language in the current proposed ordinance.

The main point involving previous City Council Members' views may be summarized by the following language from a document located during City Council staff research on the proposed ordinance:

“We still require the pedestrian to be *in* the intersection or crosswalk in order to require the motorist to yield. This is *not* pedestrian friendly. ... It's far more pedestrian friendly and appropriate for motorists to yield to pedestrians *at* an intersection or a crosswalk. Motorists must become more aware of pedestrians, and pedestrian presence on our streets must be given priority ... for us to become the 'pedestrian friendly' city we talk about ...”

A response from the City Attorney's Office to a question relating to this staff memorandum included a reference to *Utah Code* Section 41-6-16 titled *Uniform application of chapter - Effect of local ordinances*. The section is part of the *Rules and Regulations* chapter of the *Motor Vehicle Act*. The section reads:

“The provisions of this chapter are applicable and uniform throughout this state and in all of its political subdivisions and municipalities. A local authority may not enact or enforce any rule or ordinance in conflict with the provisions of this chapter. Local authorities may, however, adopt ordinances consistent with this chapter, and additional traffic ordinances which are not in conflict with this chapter.”

A question for the City Council is: Would amending the proposed ordinance to include language requiring motorists to yield to pedestrians who are at intersections but not in crosswalks be in conflict with State law or consistent with State law? Again, Council Members may wish to refer to the letter from the City Attorney's Office included in the City Council packets.

## OTHER ITEMS

The proposed ordinance also would define which traffic violations are prosecuted as criminal violations and which are prosecuted as civil violations. The ordinance also would close a variety of “loopholes” in the existing City traffic code including:

- Adding language that says, “It shall not be a defense that there was no apparent observer present to view such speed contest or exhibition,” to Section 12.36.040 titled *Speed or Acceleration Contests Prohibited*.
- Prohibiting the use of more than four headlights or auxiliary lights with beam intensities of more than 300 candle-power. (Section 12.28.090.)
- Making it illegal to park parallel more than 12 inches away from the curb of a street. According to the Attorney's Office, the 12-inch restriction is State law.

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