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

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**DATE:** September 6, 2002  
**TO:** City Council Members  
**FROM:** Russell Weeks  
**RE:** Traffic Code Amendments  
**CC:** Cindy Gust-Jenson, Rocky Fluhart, DJ Baxter, Margaret Hunt, David Dobbins, Tim Harpst, Larry Spendlove, Mary Johnston, Dan Bergenthal, Gary Mumford, Michael Sears

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This memorandum pertains to proposed amendments to the Salt Lake City traffic code. The proposed amendments are scheduled for a City Council briefing and discussion on September 10. There appear to be three issues remaining for the City Council to consider. The Administration also has suggested that the City Council compare part of the proposed amendment in Section 12.76.045 to the current ordinance's Section 12.76.030. Both sections involve drivers' duties to yield to pedestrians.

### **Potential Options**

- Schedule the proposed amendments for formal City Council consideration.
- Return the proposed amendments to the City Attorney's Office for further revision based on the September 10 briefing.

### **Issues/Questions for Consideration**

1. Should accidents that result in injuries to pedestrians in crosswalks be divided into those that are prosecuted as criminal offenses and those that are prosecuted as civil offenses, as the draft ordinance proposes, or should all accidents that result in injuries to pedestrians be prosecuted as criminal offenses?
2. Should drivers determined to have failed to yield to pedestrians with disabilities be subject to enhanced civil penalties, as proposed in the attached draft ordinance?
3. What is the City Council's preference to either retain language in the current ordinance's Section 12.76.030 involving drivers' duties to yield to pedestrians in crosswalks or to adopt proposed language in Section 12.76.045?
4. Should the City Council make changing Utah law regulating automobile drivers' duties to protect pedestrians at intersections or crosswalks a priority for the 2003 session of the Utah Legislature?

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### **Discussion/Background**

Potential amendments to the traffic code first were brought before the City Council in February 2001. The proposed amendments were designed to make the traffic code conform to Utah law, to clarify issues raised by Salt Lake City Administrative Court judges, and to make clear delineations between civil violations and criminal violations.

Consideration of the proposed amendments was delayed during discussions that focused on potential ways to extend greater protection to pedestrians near crosswalks and intersections. Consideration also was delayed during changes in which the Administrative Court became the City Justice Court and while budget appropriations for the City Justice Court were discussed and acted on before the July 1 start of the current fiscal year.

After a March 5 briefing this year the City Council appointed a subcommittee to make recommendations to the full Council on proposed amendments. The subcommittee consisted of Council Members Dale Lambert, Jill Love, and Nancy Saxton. The subcommittee met on April 8 with representatives of the Justice Court administration, the City Attorney's Office, and the Transportation Division. After the April 8 subcommittee meeting the Administration revised the proposed amendments and forwarded a legislative version of the amendments on July 11. Subcommittee members then approved calendaring the latest version of the amendments for a briefing before the full Council on September 10.

According to City Council staff notes, the April 8 subcommittee meeting centered on three issues.

1. Should people with disabilities be treated as a special category of people that vehicles should yield to in marked or unmarked crosswalks? (Included in Section 12.76.045 of the draft ordinance)
2. Should all auto-pedestrian accidents caused by the negligent operation of a vehicle that result in injury to a pedestrian be prosecuted as criminal actions? (Section 12.52.355 of the proposed amendments provides that accidents that result in "*serious bodily injury*" to pedestrians would be prosecuted as criminal offenses, but accidents that result in "*bodily injury*" to pedestrians would be prosecuted as civil offenses.)
3. What should be the difference between "*serious bodily injury*" and "*substantial bodily injury*?" (Section 12.52.355 of the proposed amendments has changed "*substantial bodily injury*" to "*bodily injury*.")

According to Council staff notes, the subcommittee voted 2-1 to retain the proposed Section 12.76.045 that dealt with drivers yielding to people with disabilities and provided an enhanced penalty for drivers issued citations for not yielding the right of way. However, the subcommittee said the issue should be discussed further by the full Council.

The subcommittee also voted 2-1 to have all auto-pedestrian accidents caused by the negligent operation of vehicles that resulted in injuries to pedestrians prosecuted as criminal offenses.

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The subcommittee then discussed the difference between definitions of “*serious bodily injury*” and “*substantial bodily injury*.” The draft proposal discussed at the March 5 meeting defined “*serious bodily injury*” as “bodily injury that creates or causes serious permanent disfigurement, protracted loss or impairment of the function of any bodily member or organ or creates a substantial risk of death.”

The March 5 draft proposal defined “*substantial bodily injury*” as “bodily injury, not amounting to serious bodily injury that creates or causes protracted physical pain, temporary disfigurement, or temporary loss or impairment of the function of any bodily member or organ.”

According to Council staff notes, Council Member Lambert suggested that the definition of “*serious bodily injury*” should include “the protracted loss or impairment of more than one year or six months” but no less than six months.

### **NEW AMENDMENTS**

The new amendments to the proposed ordinance retain Section 12.76.045, dealing with drivers yielding to people with disabilities and providing an enhanced penalty for drivers issued citations for not yielding the right of way.

The amendments also define – in Section 12.52.355 – “*serious bodily injury*” as “bodily injury that creates or causes serious permanent disfigurement, protracted loss or impairment of the function of any bodily member or organ for longer than six months, or creates a substantial risk of death.” The amendments change “*substantial bodily injury*” to “*bodily injury*” and define it as “injury not amounting to serious bodily injury.”

Where the new proposed amendments appear to differ with the subcommittee is negligent operation of a vehicle causing serious bodily injury or death is included as a criminal offense, but negligent operation of a vehicle causing only bodily injury “shall be deemed guilty of a civil violation.”

A couple of things might be noted:

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. Given that Justice Courts have replaced Administrative Law Courts, what arguments remain for differentiating between criminal and civil offenses in accidents resulting in injuries to pedestrians?

Section 2.75.020 regulating incidents involving the failure of vehicles to yield to people with disabilities requires a mandatory appearance before a Justice Court judge and enhanced penalties. The section also requires a mandatory appearance before a Justice Court judge and the potential for enhanced civil penalties.

In a related issue, the Administration has suggested that the City Council compare part of the proposed amendment in Section 12.76.045 to the current ordinance’s Section 12.76.030. Both sections involve drivers’ duties to yield to pedestrians.

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Part of the proposed amendment in Section 12.76.045 reads, “... vehicles shall yield the right of way to pedestrians by slowing or coming to a complete stop while such pedestrian is within a marked or unmarked crosswalk and is in the vehicle’s travel lane or adjoining lane.”

Part of the current ordinance’s Section 12.76.030 reads, “... the driver of a vehicle shall yield the right of way by coming to a complete stop to allow a pedestrian to cross the roadway when the pedestrian is in the crosswalk any place upon that half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger ...”

According to the Administration, is that under the proposed language in the amendment a “moving auto-free pocket” would be created around a pedestrian crossing a street. However, the language also would allow vehicles on streets that have multiple lanes to continue to through crosswalks while a pedestrian is in the crosswalk, if the lane the vehicle is in is not in the lane next to the pedestrian.

It is Council staff’s recollection that in earlier briefings the City Council was satisfied with the language in the proposed amendment. However, on reflection it appears to staff that the language in the existing section 12.76.030 may be the more stringent requirement for drivers to follow.

Finally, the City Council may want to deal with the issue of yielding to pedestrians at the edges of crosswalks.

It should be noted that at the March 5 meeting of the full City Council then-City Attorney Roger Cutler indicated that requiring drivers to yield to pedestrians waiting at a curb near a crosswalk conflicted with State law. He said an ordinance enacting that requirement would result in the dismissal of traffic citations and suggested that the Council pursue changing State law was a better way to approach the issue.

In July the Utah League of Cities & Towns Legislative Policy Committee considered a list of issues for the Policy Committee to pursue actively during the Legislature’s 2003 session. The list included “pedestrian safety issues” such as protecting pedestrians at the edges of crosswalks. However, the Policy Committee voted to make the State’s tax policies affecting municipalities its first priority in the 2003 session.

The City Council may wish to consider whether it should pursue changing State law to protect pedestrians at the edges of crosswalks a legislative priority of its own. Doing that probably would involve having a legislator sponsor a bill to amend State law.