

Minutes of a Meeting of
ENVIRONMENT, SAFETY & COMMUNITY SERVICES COMMITTEE

held February 10, 2014

6:30 p.m.

Present: Councilman Steve Lee, Chair
Councilman Dwight Clark

Also Present: Law Director Ebert, Councilman Henderson, Service Director Thomas, Operations Manager Landers, Pat McGannon, Jacob VanSickle of Bike Cleveland, Jennifer Smillie of the Village Bicycle Cooperative, Lawrence Kuh.

Police Chief Spaetzel arrived at 6:55 p.m.

Audience: Peggy Ludwig, Warren Remein, Luke Smillie, Tara Wendell, Denny Wendell

Chairman Lee called this second meeting of the Environment, Safety and Community Services Committee of 2014 to order at 6:30 p.m. Mr. Lee thanked everyone for their attendance this evening. He noted that Councilwoman Lieske has been excused from the meeting due to a work commitment.

Bicycle Ordinances, Codified Ordinance Chapter 377

Law Director Ebert distributed a draft copy of revised Chapter 377, showing revisions prepared by the Walter Drane Company which mirrors most of all the cities in the State of Ohio. The yellow highlighted portions of the document are the revisions proposed by Mr. Pat McGannon. The prosecutor opposes putting in a section regarding harassment because he feels it cannot be defended. Mr. Lee stated that there are already provisions in our criminal code regarding harassment. Mr. Ebert added that he does not want to create something with the prosecutor's office and the police department that is difficult to defend. Mr. Lee asked Mr. Ebert to review the existing criminal statute and identify something that may apply to that scenario and circulate that to the committee.

Mr. McGannon stated that he has been told that camera evidence is not accepted in court. He has been considering getting a camera for his bicycle in case he gets hit by an automobile. Mr. Ebert stated that police cameras are accepted as evidence. Mr. Clark noted that there was previous consideration to putting outside mounted cameras on the school busses to film automobiles passing school busses on Lake Road. They were unable to find something that was technologically capable so they moved the bus stop down about 500 feet which made a huge difference in rectifying the problem.

Mr. Lee stated that in addition to the draft revision of the ordinance distributed by Mr. Ebert, the committee is in possession of a memorandum prepared by Gary Ebert dated January 23, 2014, and the proposals prepared by Mr. Pat McGannon and the other sponsors of the revisions prepared last summer.

The question has been asked as to what are the advantages of going to the Walter Drane version of the bicycle ordinances versus using more of the language from the bicycle group. Mr. Ebert stated that the advantage would be that it has been tried and is accepted by the court. The state has mandated on the various cases that have been brought under state code. The Walter Drane Company does the codified ordinance update for the City of Bay Village. In the process of updating the city's codified ordinances they also update any state requirements or state laws that have been passed during the time since the last codification update which occurs annually. Mr. Lee asked if the Walter Drane Company is responsible for notifying the city that things are out of date. Mr. Ebert stated that it is the city's responsibility. Bay Village updates their code annually. Rocky River does theirs every two years.

Sections 301.04 and 301.51 of the Traffic Code

Mr. Lee stated that the definition of bicycle in the proposed revision to Section 301.04 is the same as the definition from the bicycle group. The definition of motorized bicycle will not be addressed.

Mr. Lee stated that once you get beyond Chapter 377 there are additional suggestions for modifying Sections 331 and 351 in Mr. McGannon's draft of proposed revisions. Section 301.51 in the draft is the definition of vehicle and is the exact wording of Ohio Revised Code 4511.01 (a) effective July 1, 2013. Applying this version to our existing code would reflect the most recent version of the Ohio Revised Code.

Section 331.03 of the Traffic Code, Overtaking, Passing to Left, Driver's Duties

This section would be an amendment to the traffic code modifying language for motorists and how they interact with bicyclists.

Mr. McGannon stated that Section 331.03 is simply further defining the existing law. The existing law is that you must pass another vehicle at a safe passing distance, but the distance is not defined. The language indicates that a safe distance of at least three (3) feet must be maintained when passing a bicycle. Mr. Ebert stated that this would be difficult to prove in court.

Jacob VanSickle of Bike Cleveland commented that they will be training officers on how to enforce these types of laws.

Mr. Remein asked if there is a similar law for motor vehicles. Mr. McGannon stated that there is not but the same law could apply to mopeds, motorcycles, and vehicles. Mr. VonSickle stated that many cities apply the law to vulnerable users, extending to police vehicles attending to

traffic citations or assistance at the side of the roadway. Mr. VonSickle stated that many cities will soon adopt this code. Mr. Lee asked Mr. McGannon to provide the committee with a list of cities in this area that have adopted this language.

Section 331.10 Turning at Intersections.

Mr. McGannon stated that most bicycle/motorized vehicle accidents occur in the intersections. This amendment will define the fact that any vehicle turning left shall yield the right-of-way to any vehicle, including a bicycle, approaching from the opposite direction.

Section 351.08 Opening Vehicle Door on Traffic Side

This is an amendment to our existing code to include bicyclists. The intent is for the motorist to be careful when opening the door of the vehicle to not collide with a moving bicycle.

Mr. Kuh stated that part of the purpose of all these amendments are to re-educate or up-educate the residents of Bay Village because the city is becoming significantly more bike oriented. Putting things in the code is going to strengthen these things that multiple people and multiple cities are identifying as being critical to bicycle safety.

Mr. McGannon noted that it all goes back to the fact that bicycles are identified as vehicles in the State of Ohio, and you cannot open your door in the way of an oncoming vehicle.

Police Chief Spaetzel joined the meeting at this time. Regarding Section 331.03, keeping a minimum safe passing distance of three feet, Chief Spaetzel stated that the cameras in the police cars do not activate unless the red lights on the vehicles are activated. The chances of the police having that violation caught on camera are not very likely. It would be an issue of the court to determine the facts based on police testimony. Mr. McGannon asked Chief Spaetzel what a safe distance would be for passing other vehicles. Chief Spaetzel stated that it is a discretionary matter up to the officer. Often it is determined based upon the circumstances surrounding it, e.g., does the bicyclist have to apply brakes or swerve. These are the types of things that are taken into consideration to determine if it is a safe distance. It is subject to the officer's observation.

Mr. McGannon stated that his thought is there has to be a minimum point at which in every situation it is never safe to pass someone. Half the states in the country already have the law and some of them have more than three feet for vulnerable vehicles. In the State of Ohio there are multiple cities with that law as well.

Chief Spaetzel stated that if a judge gets stuck on that number defined as minimum safe distance it is more likely that they will just throw it out. If the language "at a reasonable safe distance" is used there is some leeway in the law that allows the police to testify to the fact that when the car pulled in front the bicyclist had to swerve and in the judgment of the officer that was not a safe distance.

Mr. Kuh asked if the minimum safe distance of three feet is defined in the law would that change anything the officers could do, compared to what it currently is. Chief Spaetzel stated that if you put that number in there it is more apt to be dismissed.

Chief Spaetzel used the example of the citation for following too closely, one vehicle following another in close proximity. There is no definitive distance in that code; it depends on speed, roadway conditions, and a lot of factors that can be taken into account.

Mr. McGannon and Mr. Kuh stated that having the minimum distance of three feet in the code will enable the education of motorists. Mr. VonSickle added that half the states in the country and every large urban city in Ohio have adopted the language. Mr. Kuh commented that the benefits outweigh the potential dismissal in the court.

Mr. VanSickle stated that it is important to note that the code does say shall leave a safe distance but not less than three feet.

Chief Spaetzel suggested that the Bay Village City Prosecutor review this proposed change. He knows the court and the judges, and what to look for in these things. He can be asked to render an opinion. Mr. Lee agreed that this would be helpful. He also asked Mr. McGannon to supply a list of the cities that have included this in their code.

Jennifer Smillie of the Village Bicycle Cooperative stated that House Bill 145 in the Ohio Legislature is currently being lobbied to be passed discussing three feet passing.

Section 377.01

Mr. Lee noted that the sentence that states “All bicycles and tricycles shall be licensed by the City as provided in this chapter” is being deleted. Mr. Lee asked if we should leave it the way it is because we have in the code now the requirement for the license. Mr. Ebert stated that it is his opinion, as far as enforceability is concerned, it should not be in the code. Mr. Lee stated that he believes the idea of registration should be kept, without enforcement, for the purposes of identifying lost or stolen bicycles. He suggested that the existing code regarding notification to the Police Department of the transfer of registration in the event a bicycle is sold should be removed from the code.

Chief Spaetzel commented that he is in favor of licensing because there are so many bicycles lost or stolen. If it is removed he can envision many bicycles not being returned to their owners. A fee of \$1.00 was charged in the past, but that practice has been dropped because the administrative cost to collect \$1.00 exceeds \$1.00.

Mr. Clark suggested having bicycles registered at the Bay Days event. Mr. McGannon stated that they register bicycles during the Bike-to-School Challenge and at the Village Bicycle Cooperative.

Mr. Lee asked if the policy of registering bicycles can be maintained if the requirement is removed from the code. Mr. Ebert stated that the policy can be maintained and part of the education process would be to encourage the residents to license bicycles to assist the Police Department in the event that a bicycle is lost or stolen.

Mr. Lee stated that he is okay with taking it out of the code as long as the policy of registering can be maintained, noting the benefit of registration.

Mr. Henderson called attention to Section 377.01 (c). He asked that if the violation was the fault of the motor vehicle operator, as written in the last sentence, why would we write that the court would require the bicycle operator or the motor vehicle operator to take and successfully complete a bicycling skills course approved by the court in addition to or in lieu of any penalty otherwise prescribed by the Traffic Code for that violation. Mr. Lee agreed that there are some words missing from that section of the proposed language. He referred to the language provided by Mr. McGannon that states that “whenever there is a violation of traffic law by a bicycle operator or a violation by a motorist that endangers a bicycle operator the court may permit demonstration of successful completion of a court-approved cycling knowledge course or test in lieu of or in addition to a fine or other penalty.” Mr. Henderson commented that he believes it is the introduction of the concept in this draft that the motor vehicle operator was endangering the life of the bicyclist. Mr. Ebert will change to read by a “bicycle operator or a violation by a motorist.”

The references listed in 377.01 (d) should be “Subsections (b) and (c) of this section do not apply.”

Section 377.02 Definitions

Mr. Lee suggested removal of the definition of motorcycle. It is defined elsewhere in the code. The definition of “tricycle” does not need to be included because it is two or more wheels and is included in the definition of bicycles as two or more wheels.

Section 377.05 Obedience to Traffic Control Devices

This will be renumbered to Section 377.04. Section 377.04 later in the document “Traffic Code Application” will be moved back to Section 377.01 (a).

Section 377.01, (b) and (c) shall be changed to “Except as provided in subsection (d)” instead of “Except as provided in subsection (e).”

The proposal from Mr. McGannon’s group is to add some additional language dealing with traffic control devices that do not detect a bicycle. (377.10 in Mr. McGannon’s proposal). There is no objection to including that language.

Any reference to “tricycle” shall be removed.

The word “pediatrician” should be “pedestrians” in Section 377.05 (b)

Section 377.06 Riding Bicycle on Right Side of Roadway; Obedience to Traffic Rules; Passing

“As near to the right as practicable” should be “As near to the right side of the roadway as practicable.”

The word “narrow” is misspelled in part (b).

Part (c) should be “bicyclist” instead of bicycle in the sentence beginning with “At no time.”

Mr. Lee asked if there is an exception for a child under the age of seven to ride in the street if accompanied by a parent or legal guardian. Discussion followed. Mr. Ebert will add the words, “unless accompanied by a parent or legal guardian to this section.”

The word “tricycle” can remain in Section 377.06 (g) and (h). The word “coaster” in these sections shall be changed to “scooter.”

Part (i) shall be replaced with a cross reference to the penalty section.

Section 377.07 Paths Exclusively for Bicycles

There are no bicycle paths in Bay Village. Mr. Lee asked if this is applicable to Bay Village. Mr. Lee questioned whether the language in reference to sidewalks should be included. Mr. Lee stated that sidewalks should be included because they were referenced in the previous code which states that it is legal to operate on sidewalks as long as they are not too congested. If they are too congested, the bicycle must be walked on the sidewalk. It goes on to say in a business district, if it is signed, there are certain areas that are prohibited. There are certain areas where riding on the sidewalk is not permitted at any time. Mr. Lee stated getting rid of “paths” and incorporating all or most of Mr. McGannon’s proposed language in its place.

Mr. McGannon suggested adding language that requires bicyclists to slow down to the speed of a pedestrian before entering a crosswalk. This will be added as part (f) under Section 377.11. Mr. McGannon will forward the correct language.

Due to the fact that a meeting of the Recreation and Parks Improvement Committee meeting was scheduled to follow at 7:30 p.m., this meeting adjourned at 7:35 p.m. Mr. Lee and Mr. Ebert will continue their work and present further revisions at a future meeting.

Steve Lee, Chair

Joan Kemper, Secretary