

AGENDA ITEM SUMMARY

FORT COLLINS CITY COUNCIL

ITEM NUMBER: 19

DATE: October 6, 2009

STAFF: Joe Olson
Steve Roy
Lt. Jim Szakmeister

SUBJECT

First Reading of Ordinance No. 098, 2009, Amending Section 805 of the Fort Collins Traffic Code Related to Pedestrians Walking or Traveling in a Wheelchair on a Highway.

RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading

EXECUTIVE SUMMARY

This Ordinance will change the Fort Collins Traffic Code to allow pedestrians, including wheelchair users, to legally travel in a bike lane or on a road shoulder if an adjacent sidewalk is in a condition that substantially interferes with the mode of travel used by the pedestrian.

BACKGROUND

The current Fort Collins Traffic Code makes it illegal for pedestrians -- including those traveling in wheelchairs -- to use streets in locations where sidewalks exist. The City's Traffic Code is in general compliance with the State Laws of Colorado. The rationale behind the existing Traffic Code and state law is that pedestrians are safest on a sidewalk that is physically separated from the roadway.

Several citizens have requested changes to the Code that would allow wheelchair users the option to use on-street bike lanes in lieu of a sidewalk. They have noted that in many instances the condition of sidewalks is such that travel by wheelchair is difficult or even impossible.

Although the intent of the existing law is to promote safe travel by pedestrians, it is apparent that there is a need to provide some flexibility to allow pedestrians to use the streets when the condition of sidewalks deters safe travel. The Police Department, the Traffic Operations Department and the City Attorney's Office have worked collaboratively to develop a new version of the pertinent section of the Fort Collins Traffic Code that would allow pedestrians to legally use the street to travel if an adjacent sidewalk is in a condition that would substantially interfere with pedestrian travel. Pedestrians would have to return to the sidewalk as soon as the condition which interfered with their travel was no longer present.

City staff solicited input from other communities and organizations around the country and did not find any that had experience allowing wheelchair users to utilize bike lanes where sidewalks are present. The United States Access Board, an independent federal agency that interprets the Americans with Disabilities Act, recommended maintaining pedestrian status for wheelchair users. The Board suggested that any ordinance changes pertain to all pedestrians rather than separating out wheelchair users as a distinct group. This was the approach taken by staff in preparing the new ordinance.

Staff has discussed the proposed changes with the Commission on Disability. Commission members provided perspective and comments on the proposed ordinance. Commission member concerns included questions about when a sidewalk is “provided” and what constitutes a “reasonably prudent person.” The Ordinance includes language reflecting the concerns of the Commission. Specifically, it was noted that a sidewalk was only considered provided if it was on the side of the street used by a pedestrian. In addition, a “reasonably prudent person” was expanded to say “reasonably prudent person having the same abilities and disabilities as the pedestrian and using the same mode of travel” to address concerns about a lack of perspective regarding the challenges faced by disabled pedestrians. The Commission on Disability voted to support the proposed ordinance. The Commission felt the ordinance addressed its concerns and the needs of the disabled community.

The proposed ordinance was also presented to the Bike Advisory Committee and the Transportation Board. The Bike Advisory Committee voted unanimously to support the proposed ordinance. The Transportation Board voted 9 – 1 in support. The one dissenting voter felt that the ordinance did not address the real issue – the need for improved sidewalk infrastructure. Letters of support from both the Bike Advisory Committee and Transportation Board are included as attachments. Staff recommends adoption of the proposed ordinance.

ATTACHMENTS

1. Commission on Disability letter
2. Bike Advisory Committee letter
3. Transportation Board letter
4. Draft Transportation Board meeting minutes, September 16, 2009



September 24, 2009

Dear Mayor Hutchinson and Members of Council:

On behalf of the members of the Commission on Disability (COD), I'd like to thank you for taking the time to listen to the concerns of wheelchair users, specifically in the instances where sidewalks are difficult and/or dangerous to navigate, rendering the bike lane the best option. We understand that this issue has been given thoughtful consideration by City Council and Staff and that Joe Olson, from traffic engineering, and David Kemp, from the bike office, have spent considerable time on the issue, including attending COD and Council meetings. Several members of City Council have been contacted by members of the COD and the larger community regarding this issue as well. We appreciate your willingness to listen. We also understand that this has been a complex issue for Council.

The COD established a subcommittee to study the issue in detail and then bring back recommendations to the full commission. After careful consideration, the COD unanimously agreed to support the proposed ordinance that was presented and discussed at our September 10, 2009 that is now being proposed for your consideration.

We believe it would be in the best interest of the entire community to move forward on this ordinance in a timely manner.

Please feel free to contact me with any questions or concerns.

Sincerely,

A handwritten signature in cursive script that reads "Terry Schlicting".

Terry Schlicting
Chair, Commission on Disabilities

**Planning, Development & Transportation**

Bicycle Advisory Committee
250 North Mason Street
P.O. Box 580
Fort Collins, CO 80522.0580

970.416.2411
970.221.6239 - fax
fcgov.com/bac

Date: September 22, 2009

From: Dan Gould, Chair, Bicycle Advisory Committee

To: Gary Thomas, Chair, Transportation Advisory Board

Subject: Support of Wheelchair Ordinance Modifications

At our September 14, 2009 Bicycle Advisory Committee meeting, public commenters Cheryl Distaso and Mike Devereaux and FCBikes coordinator David Kemp presented background information and a compromise approach to the use of wheelchairs in bike lanes as embodied in Ordinance 805-1 a,b,c.

The BAC members discussed various aspects of this issue and then voted unanimously to support the modified ordinance and its aims.

We appreciate the efforts of all those involved in developing this solution.

Please let me know if you have any questions.

**Transportation Board**

Gary Thomas, Chair

September 22, 2009

Mayor Hutchinson and Members of Council,

At its regular meeting on September 16, 2009 the Transportation Board voted 9 to 1 to support the resolution to change the rules on wheelchairs and pedestrians using the bike lanes. The Bicycle Advisory Committee had previously voted unanimously to support the resolution and their letter is attached.

The one dissenting vote was cast out of concern that allowing wheelchairs to circumvent bad sidewalks was a band-aid approach and that the real effort should be to fixing the pedestrian / wheelchair sidewalk infrastructure so that using the street was not necessary in the first place.

In discussing this item, the Transportation Board had concerns about safety issues, especially when the bike lane is on a higher-speed street where there is a high differential between the wheelchair / pedestrian and the passing automobiles. Although this current resolution provides an immediate cure for some mobility issues, longer term Council and staff are encouraged to seek better alternatives through improvement of the city's sidewalks, multi-use walkways and paths.

I would be happy to provide more background on this recommendation at your convenience.

Sincerely,

Gary D. Thomas
Chair

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DRAFT

MEETING MINUTES

of the

TRANSPORTATION BOARD

September 16, 2009

6:00 p.m.

City of Fort Collins Community Room

215 North Mason

Fort Collins, CO 80521

DRAFT**7. ACTION ITEM****A. Modification to City Code allowing wheelchairs in bike lanes.**

Chair Thomas introduced Cheryl Distaso who asked to address the Transportation Board regarding a change to City Ordinance allowing wheelchairs in bike lanes.

Distaso: Thank you for having me. I work for a local non-profit Center for Justice, Peace and Environment. I want to speak to you tonight about an issue that we have been working on for almost 2 years. I became aware of this situation in December of 2007. I realized that people who are wheelchair users are sometimes safer in bike lanes than on sidewalks and the way that our State and City Code is written, it is not clear if they can be there. It states that a wheelchair must use the sidewalk if a sidewalk is provided, but the term provided is never defined so it defaults to police officer discretion. I want to make this language more understandable. We have a draft change to ordinance Section 805 of the City Traffic Code clarifying when a wheelchair can be in the bike lanes. The Bicycle Advisory Committee has agreed to support the ordinance modification and we are asking for the Transportation Board to also lend its' support when it comes before Council on October 6th.

Bill Jenkins, Bike Advisory Adjunct: The Bicycle Advisory Committee had quite a good discussion about this issue and basically we felt that it does not appear to be a safety hazard.

One of the questions that came up was how large in the community is the wheelchair user population. Is it small? Also the sidewalks are inconsistent and there are many different types of wheelchairs out there and sometimes the bike lane would be safer. The consensus was that as long as the wheelchair is traveling in the same direction as traffic the wheelchair user should be safe.

The modified code would read: When a pedestrian intends to walk or travel in a wheelchair along or upon a highway and a sidewalk is provided on the same side of the highway as the pedestrian it shall be unlawful for the pedestrian to walk or travel along and upon the roadway, rather than the sidewalk, except to the extent that a pedestrian's departure from the sidewalk is reasonably necessary to avoid sidewalk conditions that would in the judgment of a reasonably prudent person having the same abilities and disabilities as the pedestrian and using the same mode of travel, substantially interfere with the mode of travel, such, conditions may include but are not limited to the absence of pavement, the presence of snow or ice, or the presence of uneven, or broken pavement.

Joe Olson, City Traffic Engineer: I would like to give a little background we have been working on this for awhile now. We have been working with the Commission on Disabilities (COD). I have attended the last four (4) COD meetings. When I say we, I mean myself, the City Attorney's Office, and Police Services. If you read through this it does not read real smoothly and the reason for that is so many different issues have arisen on how we can accommodate the community safely and still acknowledge that it is most desirable for

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wheelchairs to be on the sidewalk. Yet there are many reasons they might not be able to do that. We tried to capture all of that in this document. In reality we are codifying what is currently happening. We are recognizing what is occurring on the streets. Staff is supporting this modification that will be going in front of Council on October 6 and we want to hear Transportation Board comments.

Robert: I have a real concern with mixing wheelchairs and traffic over 25 mph. Will there be restrictions as to how and where this would be applicable? Or does it leave it wide open.

Olson: The way it is written leaves it open.

Lund: Do bike lanes follow ADA guidelines. With budget shortfalls, there will be an increase in potholes and other unattended problems in the streets. With wheelchairs, bicyclists and the new three foot rule with cars sharing the road could we be seeing traffic congestion as motorists are forced into driving slower to maintain a safer environment for pedestrians.

Joe: ADA requirements are in effect everywhere, however, are not in total compliance throughout the community with sidewalks we are trying to address the problems as they come up and this is an ongoing process. This is the reason wheelchair users are in the streets now because the sidewalks are deficient. The same problem that wheelchair users face on sidewalks will be also faced on the street. The wheelchair user population is not that large. What you see now are wheelchair users that are using the bike lane because they have to. We believe what we see today is what we will see after the ordinance is passed.

Lund: If we change the ordinance, which removes the technicality with permission to use the bike lane, wouldn't this increase street usage by those that do not now use the bike lane?

Olson: This does not provide carte blanche. If a sidewalk is provided that can be used safely, then the sidewalk must be used unless something substantially interferes with their ability to do so.

Robert: Would we require a person in this situation to use a flag of some sort?

Olson: Wheelchair users are considered pedestrians; this ordinance applies to all pedestrians. We spoke with the U.S. Access Board, the Federal Program that oversees ADA; they were adamant that we do not want to create a special class with different rules.

Robert: There are several bike lanes in town that unfortunately do not have the width necessary to accommodate the width of a wheelchair. Do we have a minimum bike lane width? It seems that if a wheelchair moves into a lane wider than the wheelchair, how do we address that?

Olson: There is a minimum bike lane width, but not all existing roadways would be able to be in compliance. There is an element of common sense to be used. If the road is not safe then the wheelchair should choose to stay on the sidewalk.

Distaso: Bike trailers are wider than wheelchairs in a lot of cases.

Jackson: What this highlights is our need to step up the commitment for funding a pedestrian efficiency plan. Two budget cycles ago we lost the pedestrian improvement program. We still have the pedestrian plan funded by Building on Basics ¼ cent, but it basically has been stripped down to half of what it had been. This is another existing pressing need.

Chair Thomas distributed copies of a letter from the Bike Advisory Board to the Transportation Board (Attachment A) submitted in support of the ordinance modification.

Robert: Based upon what I heard tonight I support this letter, but somewhere along the line we should address the need for help in the pedestrian arena. A subsequent letter expressing the need to have bike lanes meet a minimum width and sidewalk conditions be maintained at adequate levels. The pedestrian improvement program is a key area not being funded.

Frazier: Maybe we could state that we are pleased that this has come about and we look forward to additional improvements.

Chair Thomas: I have heard concerns regarding mixing wheelchairs and vehicles traveling at higher speeds. Is this something that we should include in our letter?

Lund: I am unclear as to the 25 mph that is being referred to as I reviewed the modified code I do not see speed referred to.

Olson: I believe this was identified as the typical posted neighborhood street speed.

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Steen: Maybe you could use this as a conditional area to allow wheelchairs in bike lanes in areas where the posted speed is 25 mph or less.

Lund: That is too limiting if we have to treat all pedestrians equally. The real issue is the need to fix the sidewalks to meet ADA requirements so the disabled can use those sidewalks. With the pavement management funding deficit more issues will arise.

Miller: I believe this is true, I spoke with a wheelchair user who pointed out to me that once we have the sidewalk issue resolved then we have the actual asphalt conditions. I agree that this is a band aid approach, but the alternative is for the wheelchair user to stay home and how do we deal with that?

Lund: Did I understand that currently it is not necessarily illegal for a wheelchair or pedestrian to use the roadway if the sidewalk is deficient.

Chair Thomas: I believe it is illegal as it is written; police could ticket a pedestrian on the street if there is a sidewalk.

Olson: The modification in the ordinance still states that where a sidewalk is provided the pedestrian must use the sidewalk. The changes will add clarifying language for what might be considered reasonable judgment for a disabled person. This could still be open to interpretation, in which a judge would have to decide.

Miller: In terms of Officer discretion, we might be surprised to be ticketed for walking across the street in our neighborhood during a time when no traffic existed, however, if we chose to cross College Avenue at 4:00 p.m. and created an unsafe condition for motorists we would have to take responsibility if a ticket was assessed. Modifying the ordinance is a way of allowing the wheelchair user personal safety choices. Enforcement would be more flexible given the pedestrian modifications.

Frazier: Would this change the culpability in terms of an accident? If a wheelchair is in the street and there is an accident could this change liability? Another item which was briefly touched upon is that there might be a good sidewalk, but if there is snow or debris that is blocking the path the street would be more appropriate. Has the legality been looked into if an accident occurs with a wheelchair in the bike lane?

Olson: This would be handled in the same manner as it exists today. It would depend upon each individual situation. We all recognize that sidewalks are the safest place for wheelchairs to travel if the sidewalk exists in good order.

Robert: What if an inability to return to the sidewalk, but the sidewalk condition improves.

Olson: The ordinance states that you must return to the sidewalk at the earliest opportunity. The ordinance reads that: "Pedestrians must return to the sidewalk as soon as the condition which substantially interfered with the pedestrian's mode of travel is no longer present."

Robert: What about asking for added language stating that unless access is unavailable.

Miller: There is a tradition in law that states, that whatever laws have been established for orderly safe movement of vehicles and pedestrians and an event happens where it is reasonable to break the law to create a safer environment under the specific circumstance. This allows peace officer discretion and the pedestrian discretion if the action taken is reasonable considering the circumstances.

Lund: In light of the discretionary ability; why would we change this? Leaving the code as is, provides a peace officer the ability to use their best discretion.

Miller: Leaving it the way it is would in some sense to require the police officer to cite the pedestrian. If we modify the language in the ordinance this allows the police officer to enforce what is reasonable and within the law. I can understand why there might be some reluctance to do it if a bad decision is made creating a safety hazard and perhaps creating injury or fatality.

Jenkins motioned to support, VanTatenhove seconded -Vote was 9 to 1 in favor

ORDINANCE NO. , 2009
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING SECTION 805 OF THE FORT COLLINS TRAFFIC CODE
RELATED TO PEDESTRIANS WALKING OR TRAVELING IN A WHEELCHAIR
ON A HIGHWAY

WHEREAS, the Fort Collins Traffic Code prohibits pedestrian use of a bike lane or road shoulder when sidewalks are available; and

WHEREAS, although the intent of the existing law is to promote safe travel by pedestrians, it is apparent that there is a need to provide some flexibility to allow pedestrians to use the streets when the condition of sidewalks deters safe travel; and

WHEREAS, several citizens have requested changes to the Traffic Code that would allow wheelchair users the option to use on-street bike lanes in lieu of a sidewalk when the condition of sidewalks is such that travel by wheelchair is difficult or even impossible; and

WHEREAS, pedestrians would have to return to the sidewalk as soon as the condition which interfered with their travel is no longer present; and

WHEREAS, the City Council finds that the proposed amendments are in the best interests of the health, safety and welfare of the citizens of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS that Section 805 of the Fort Collins Traffic Code is hereby amended to read as follows:

805. Pedestrians walking or traveling in a wheelchair on highways.

- (1) ~~Where sidewalks are provided, it shall be unlawful for any pedestrian to walk or travel in a wheelchair along and upon an adjacent roadway.~~ **When a pedestrian intends to walk or travel in a wheelchair along or upon a highway and a sidewalk is provided on the same side of the highway as the pedestrian, it shall be unlawful for the pedestrian to walk or travel along and upon the roadway, rather than the sidewalk, except to the extent that a pedestrian's departure from the sidewalk is reasonably necessary to avoid sidewalk conditions that would, in the judgment of a reasonably prudent person having the same abilities and disabilities as the pedestrian and using the same mode of travel, substantially interfere with the mode of travel. Such conditions may include but are not limited to the absence of pavement, the presence of snow or ice, or the presence of uneven or broken pavement.**
 - (a) ~~Pedestrians walking or traveling in a wheelchair along and upon highways where sidewalks are~~ **is not provided on the same side of the highway as the pedestrian or where the sidewalk provided is in a condition that substantially interferes with the mode of travel used by**

~~the pedestrian, the pedestrian shall walk or travel only on a road shoulder as far as practicable from the edge of the roadway~~ **within a bike lane or on a road shoulder, as far as practicable from the edge of the roadway. Pedestrians must return to the sidewalk as soon as the condition which substantially interfered with the pedestrian's mode of travel is no longer present.**

- (b) Where neither a sidewalk, **bike lane** nor road shoulder is ~~available~~ **provided**, any pedestrian walking or traveling in a wheelchair along and upon a highway shall walk as near as practicable to an outside edge of the roadway and, in the case of a two-way roadway, shall walk or travel only on the left side of the roadway facing traffic that may approach from the opposite direction; except that any person lawfully soliciting a ride may stand on either side of such two-way roadway where there is a view of traffic approaching from both directions.
- (2) No person shall stand in a roadway for the purpose of soliciting a ride from the driver of any private vehicle. For the purposes of this Subsection (2), "roadway" means that portion of the road normally used by moving motor vehicle traffic.
- (3) It is unlawful for any person who is under the influence of alcohol or of any controlled substance, as defined in Section 12-22-303 (7), C.R.S., or of any stupefying drug to walk or be upon that portion of any highway normally used by moving motor vehicle traffic, **including bike lanes.**
- (4) This Section applying to pedestrians shall also be applicable to riders of animals.
- (5) The City may, by ordinance, regulate the use by pedestrians of streets and highways under its jurisdiction to the extent authorized under Subsection (6) of this Section and Sections 42-4-110 and 42-4-111, C.R.S., but no ordinance regulating such use of streets and highways in a manner differing from this Section shall be effective until official signs or devices giving notice thereof have been placed as required by Section 42-4-111 (2), C.R.S.
- (6) No person shall solicit a ride on any highway included in the interstate system, as defined in Section 43-2-101 (2), C.R.S., except at an entrance to or exit from such highway or at places specifically designated by the Colorado Department of Transportation; or, in an emergency affecting a vehicle or its operation, a driver or passenger of a disabled vehicle may solicit a ride on any highway.
- (7) Pedestrians shall only be picked up where there is adequate road space for vehicles to pull off and not endanger and impede the flow of traffic.

- (8) Upon the immediate approach of an authorized emergency vehicle making use of audible and visual signals meeting the requirements of Section 213 or of a police vehicle properly and lawfully making use of an audible signal only, every pedestrian shall yield the right-of-way to the authorized emergency vehicle and shall leave the roadway and remain off the same until the authorized emergency vehicle has passed, except when otherwise directed by a police officer. This Subsection (8) shall not relieve the driver of an authorized emergency vehicle from the duty to use due care as provided in Sections 107(4) and 807.

Introduced, considered favorably on first reading, and ordered published this 6th day of October, A.D. 2009, and to be presented for final passage on the 20th day of October, A.D. 2009.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 20th day of October, A.D. 2009.

Mayor

ATTEST:

City Clerk