



## STRICT LIABILITY TO PROTECT BICYCLISTS AND PEDESTRIANS IN SEATTLE

What can Seattle do to make our roads safer? Make drivers strictly liable if they hit pedestrians or bicyclists. Very few drivers intentionally hit bicyclists, but every day drivers turn in front of oncoming bikes, open doors, and cut off and barely squeeze by bicyclists.

Most motorists who hit bicyclists and pedestrians don't do so intentionally, but are simply not paying sufficient attention. A law that required drivers to yield to bicycles and pedestrians and which made motorists strictly liable for not yielding would mean fewer collisions.

Those of us who ride daily frequently experience angry drivers who see bicyclists as infringing upon "their" roads. A strict liability law would go a long way to deter drivers who like to scare bicyclists but don't intend to actually hit them.

Strict liability for bicycle crashes is not unprecedented. It is the law in the Netherlands. At sea, powerboats yield to sailboats. Here in Washington we have strict liability for dog bites.<sup>i</sup> The law is fairly clear for bicyclists using the sidewalk:

The driver of a vehicle shall yield the right of way to any pedestrian or bicycle on a sidewalk. The rider of a bicycle shall yield the right of way to a pedestrian on a sidewalk or crosswalk.<sup>ii</sup>

Seattle should continue and clarify this line of thought. The Seattle Municipal Code could provide the following:

**Motor Vehicles Shall Yield to Bicycles and Pedestrians.** The driver of a motor vehicle who fails to yield to a bicycle or pedestrian shall be strictly liable for such damages as may be caused by the failure to yield.

What about a "crazy bicyclist" wearing all black, riding at night, with no reflectors or lights? Just as there is a defense for harassing a dog that bites,<sup>iii</sup> there could be a defense for bicyclists or pedestrians with a death wish:

**Visibility or Recklessness as a Defense.** Proof that a bicyclist or pedestrian intentionally or recklessly caused a collision, or that a bicyclist's failure to have required visibility equipment<sup>iv</sup> was a proximate cause of a collision, shall constitute contributory negligence.

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If drivers were more wary of bicyclists, more people would be willing to bicycle. In the Netherlands, about a third of all trips are made by bicycle. Here in Seattle, only about three percent of us bike to work and our recent bicycle count suggests that this may actually be decreasing.

A new law requiring drivers to yield to bikes would likely bring out more bicyclists. More riders would further increase safety. Statistics from places where more people ride show fewer injuries, probably because drivers are more aware of bicyclists. More people on bikes means fewer people in cars and therefore better traffic flow for everyone. Strict liability could get things moving in the right direction.

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## CURRENT SEATTLE LAWS

### **SMC 11.40.420 Pedestrian right-of-way.**

The City Council may by ordinance designate streets upon which pedestrians will be granted right-of-way over vehicles using that street.

### **SMC 11.44.100 Right-of-way in crosswalk.**

A person operating a bicycle across a roadway upon and along a crosswalk shall have all the rights and duties applicable to a pedestrian under the same circumstances, but shall yield to pedestrians upon and along a crosswalk. No person operating a bicycle shall suddenly enter a crosswalk into the path of a vehicle which is so close that the driver cannot yield safely.

### **SMC 11.40.040 Right-of-way in crosswalk.**

The operator of an approaching vehicle shall stop and remain stopped to allow a pedestrian using an unmarked or marked crosswalk or a disabled person using a curb ramp as provided in Section 11.40.090 to cross the roadway when the pedestrian or disabled person is upon or within (1) lane of the half of the roadway upon which the vehicle is traveling or onto which it is turning. For purposes of this section, "half of the roadway" means all traffic lanes carrying traffic in one (1) direction of travel and includes the entire width of a one-way roadway. This section shall not apply to pedestrians crossing a roadway at a point where an accessible pedestrian tunnel or overhead pedestrian crossing has been provided.

### **SMC 11.44.040 Riding on roadways.**

Every person operating a bicycle upon a roadway at a speed slower than the normal and reasonable flow of motor vehicle traffic thereon shall ride as near to the right side of the right through lane as is safe, except as may be appropriate while preparing to make or while making turning movements, or while overtaking and passing another bicycle or vehicle proceeding in the same direction. A person operating a bicycle upon a roadway that carries traffic in one (1) direction only and that has two (2) or more marked traffic lanes may ride as near to the left side of the left through lane as is safe. A person operating a bicycle upon a roadway may utilize the shoulder of the roadway or any specially designated bicycle lane if such exists.

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<sup>i</sup> RCW § 16.08.040.

<sup>ii</sup> RCW § 46.61.261.

<sup>iii</sup> RCW § 16.08.060.

<sup>iv</sup> RCW § 46.61.780 requires bike lighting during the "hours of darkness."