



TESTIMONY OF THE WASHINGTON AREA BICYCLIST ASSOCIATION ON THE DISTRICT DEPARTMENT OF TRANSPORTATION'S SECOND PROPOSED VISION ZERO REGULATIONS

March 2, 2017

Councilmember Cheh and Members of the Committee:

The Washington Area Bicyclist Association (“WABA”)¹ writes to provide testimony on the January 20, 2017 notice of second proposed rulemaking (the “Second Proposal”) by the District of Columbia Department of Motor Vehicles (“DMV”) and District of Columbia Department of Transportation (“DDOT,” and together with the DMV, the “Agencies”).

Coming more than year after the Agencies’ first proposed rule of December 11, 2015 (the “First Proposal”), at a time when urgent and drastic action is needed to make any progress toward achieving the District’s goal of reaching zero transportation fatalities and serious injuries by the year 2024, the Second Proposal is largely a disappointment.

By the Agencies’ own description, Vision Zero is supposed to be a data-driven initiative.² And the data on traffic deaths in the District is as clear as it is alarming. Annual traffic deaths increased 47% from 2012 to 2016.³ Annual traffic deaths increased 8% from 2015 to 2016. Traffic deaths in 2017 are on pace to increase 71% from 2016, and 153% from 2012.

So far as we are aware, car, truck, and motorcycle crashes caused every single one of these traffic deaths in DC since 2012. Unsafe driving, coupled with engineering that encourages unsafe driving, have by far been the biggest threat to the safety of our roadway users. Released amid this crisis of rising traffic deaths, the Second Proposal seems utterly divorced from reality.

¹ WABA’s mission is to create a healthy, more livable region by promoting bicycling for fun, fitness, and affordable transportation; advocating for better bicycling conditions and transportation choices for a healthier environment; and educating children, adults, and motorists about safe bicycling. WABA seeks to achieve this through advocacy, outreach, and education initiatives, as well as membership and development growth. WABA works for the D.C. metro area, which includes the following jurisdictions: Washington, D.C.; Montgomery County; Prince George’s County; Arlington County; Fairfax County; and the city of Alexandria.

² See DDOT, [The Vision Zero Initiative](#) (“Vision Zero strategies will be informed by a systematic data and information-driven process that identifies and prioritizes interventions with the greatest potential to eliminate fatalities and serious injuries.”)

³ Metropolitan Police Department, [Traffic Fatalities](#) (accessed February 21, 2017, reporting traffic fatalities as of February 15, 2017).

Compared to the First Proposal, the Second Proposal waters down the penalties that would apply to dangerous driving, and contrives new penalties for pedestrian and bicyclist behaviors that have not been proven to represent a serious threat to public safety. These changes seem to be *intended* to provide the appearance of a balanced approach – as if imposing a \$150 fine on a bicyclist who strikes a pedestrian justifies imposing the same fine on a driver who strikes a bicyclist, for instance. Instead, the changes would distort culpability by imposing fines on the behaviors of vulnerable roadway users that are disproportionate to the harm they pose. Drivers strike bicyclists more often than bicyclists strike pedestrians, and are far more likely to cause death and serious injury in the process. This disproportionality indicates that the new and heightened penalties for pedestrian and bicyclist offenses would be “arbitrary, capricious,” and “unsupported by substantial evidence” under the District of Columbia Administrative Procedure Act, and should not be included in the Agencies’ final rule.⁴

This letter explains why, with a few exceptions, the First Proposal would be more effective, fair, and legally defensible than the Second Proposal. Part I addresses bicycling offenses. Part II addresses pedestrian offenses. Part III addresses driving offenses. Part IV addresses slow zones. Finally, Part V addresses the truck side guard requirement.

I. Bicycling Offenses

The Second Proposal would double (from \$25 to \$50) a number of fines for bicyclist behavior:

- carrying objects that prevent the operator from keeping one hand on handlebars;
- hitching on a vehicle;
- failing to yield right of way; and
- excessive speed.

The Second Proposal would also introduce new infractions for:

- colliding with a pedestrian crossing the roadway with the right of way, punishable by a \$150 fine;
- colliding with a pedestrian while riding on the sidewalk, punishable by a \$100 fine; and
- riding with headphones in both ears, punishable by a \$50 fine.

While WABA does not condone these behaviors, we strongly disagree that they need to be addressed with these new and heightened fines, for the following reasons:

⁴ D.C. Code § 2-510(a)(3).

- **Lack of Evidence.** The Agencies have not presented any evidence that supports the notions that (1) bicyclists engage in these behaviors with any frequency, (2) when they do, these behaviors cause crashes, or (3) those crashes result in death or serious injury. We do not believe such evidence exists. It would contradict a fundamental principle of Vision Zero for a rule to be driven by anecdotes or gut reactions rather than data.
- **Disproportionality.** The penalties for bicyclists in the Second Proposal would be disproportionate to the risk that these behaviors pose. For instance:
 - A driver who strikes a bicyclist is far more likely to cause death or serious injury than a bicyclist who strikes a pedestrian. Drivers travel at higher average speeds and operate vehicles hundreds of times heavier than bicycles. Yet, the Second Proposal would impose the same fine of \$150 for either offense. Considering the actual risk of death and injury, the fine for a driver who strikes a bicyclist should be many times the fine for a bicyclist who strikes a pedestrian.
 - The Agencies have presented no evidence that bicyclists with headphones in both ears present a safety hazard commensurate with the proposed new fine. It is entirely possible that drivers, who sit in enclosed steel and glass vehicles and are free to listen to music loudly, are less capable of hearing the sounds of other road users than are bicyclists with headphones in their ears. The Second Proposal, however, would target bicyclists exclusively and leave unaddressed the problem of drivers who cannot hear the sounds of the outside world. This approach is discriminatory at worst, and arbitrary at best.
 - Likewise, the Second Proposal would increase the fine for a bicyclist who carries objects that prevent her from keeping one hand on handlebars, but D.C. law contains no infraction for a motorist who drives without one hand on the steering wheel.
- **Misuse of Infractions.** Enforcement efforts should focus squarely on dangerous drivers, who cause the most death and destruction among roadway users. But we fear that these new and heightened infractions for bicyclists will instead result in enforcement resources being used to target and harass bicyclists. In our experience, traffic enforcement officers often have a poor understanding of the laws that apply to bicyclists, and as a result, they often write tickets for infractions that either do not exist or have not been violated. The Second Proposal could exacerbate this problem, by providing officers with a larger menu of infractions with which to write undeserved tickets.
- **Messaging.** The Second Proposal would send a loud message to traffic enforcement officers, as well as the public, that dangerous bicycling is as serious a threat to public safety as dangerous driving. That is precisely the wrong message to send when the

future of sustainable transportation in our city depends on people choosing to drive less often. The message will also frustrate DDOT's efforts to re-engineer streets to accommodate bicyclists. Those efforts are critical for growing the numbers of risk-averse, safely-riding bicyclists in the District.

For these reasons, it is unnecessary and would be counterproductive for the Agencies to include these new and heightened penalties in their final rule.

II. Pedestrian Offenses

The Second Proposal would multiply tenfold (from \$10 to \$100) the penalties for walking suddenly into the path of a vehicle, and failing to yield to an emergency vehicle. We believe both of these changes are misguided and should be discarded in the Agencies' final rule.

When investigating a crash that involves a pedestrian, police officers often take the driver's self-serving account about what happened, or even fail to interview the victim. Sometimes, the injury to the pedestrian is so severe that the pedestrian cannot remember what happened or provide her account to the investigating officer. As a result, absent video evidence, any conclusion by the police that a pedestrian walked into the path of a vehicle has a high likelihood of being incorrect. We do not believe it is appropriate for the Agencies to create a \$100 offense for an infraction of which the proof is so often unreliable. Creating and enforcing such an infraction would be tantamount to victim-blaming.

In addition, it is sometimes unavoidable for pedestrians to end up in the path of an emergency vehicle. D.C. has particularly wide streets and long crosswalks, especially downtown. Pedestrians move much more slowly than vehicles, and often do not have the time to move out of a crosswalk in the time between when they first hear the sirens of an emergency vehicle and when the emergency vehicle reaches them. Drivers who pull forward into a crosswalk to make room for the emergency vehicle can also make it difficult for pedestrians to clear the crosswalk safely. We seriously doubt that pedestrians fail to yield to an emergency vehicle by choice, and therefore, we believe it is inappropriate to impose a \$100 fine on this behavior.

III. Driving Offenses

Compared to the First Proposal, the Second Proposal weakens nearly all the penalties for the dangerous driving offenses covered in the rulemaking. In general, we believe the stronger penalties of the First Proposal are much more appropriate and are entirely warranted by the risks that dangerous driving poses.

This Part describes specific aspects of the Second Proposal that present the greatest concerns.

A. Penalty for Striking Bicyclist

The Second Proposal would decrease the penalty for striking a bicyclist from the \$500 proposed in the First Proposal to \$150. However, D.C. law *requires* the Agencies to impose

a \$500 fine for this offense. Section 4 of the Council’s Bicycle Safety Amendment Act of 2013 amended Title 18, Section 2600 of the Municipal Regulations to create a \$500 offense for a driver that collides with a bicyclist.⁵ It appears that this amendment was never published in the Municipal Regulations as it should have been. The District of Columbia Administrative Procedure Act requires “[e]very rule, regulation, and document having general applicability and legal effect adopted by the Commissioner, the Mayor, the District of Columbia Council, and each agency” to be compiled in the Municipal Regulations.⁶ The Agencies should correct this mistake and carry out the clearly expressed will of the Council by implementing a \$500 fine for striking a bicyclist.

B. Penalty for Stopping, Standing, or Parking in a Bike Lane

The First Proposal would have set the fine for stopping, standing, or parking in a bike lane at \$200 for non-commercial vehicles and \$300 for commercial vehicles. The Second Proposal waters down the proposed fine to \$150 for either type of vehicle.

The fines of the First Proposal would be more effective than the fines of the Second Proposal. Drivers who stop, stand, or park in bike lanes endanger bicyclists and other drivers. When a bike lane is blocked by a car or truck, even temporarily, bicyclists are forced to merge into a regular traffic lane. This sudden need to merge out of a bike lane and into motor vehicle traffic creates a safety hazard for drivers and bicyclists. This is an all-too-common experience for bicyclists in the District, one that discourages inexperienced or apprehensive riders from riding their bikes. The common and dangerous practice of drivers blocking bike lanes completely negates the value of a bike lane and discourages people from using bicycles as transportation.

It is clear to anyone who has tried to ride a bike in the District that the current fine of \$65 has not been a sufficient deterrent for drivers to stop blocking bike lanes. This is especially the case as to drivers of commercial delivery vehicles and for-hire vehicles, who appear to see the convenience of using a bike lane as temporary parking as being well-worth the small risk of receiving a \$65 fine – in other words, as the “cost of doing business.” For this reason, we believe the prospect of higher fines in general, and a further heightened fine for commercial vehicles, would provide a more effective deterrent against this dangerous practice.

C. Penalty for “Dooring” a Bicyclist

The Second Proposal would lower the penalty proposed in the First Proposal for “dooring” a bicyclist to \$50 from \$100. “Dooring” is a highly negligent act that, like colliding with a bicyclist with a moving vehicle, can result in serious harm. To maintain proportionality with the legally required \$500 fine for striking a bicyclist, the Agencies should implement a penalty for “dooring” that is above \$100. At a minimum, however, the Agencies should adopt the \$100 fine of the First Proposal.

⁵ [Bicycle Safety Amendment Act of 2013](#), L20-0049, § 4.

⁶ D.C. Code § 2-552(b)(1).

At the same time, we take note that the Second Proposal would, for the first time, apply the “dooring” infraction to the passenger side of the vehicle. We welcome and support this change.

Unfortunately, to some extent, dooring is a natural result of placing unprotected bike lanes immediately adjacent to the “door zone” of parked cars, especially in a city like D.C. where visitors from other jurisdictions may not be accustomed to bicyclists riding adjacent to their cars. The best way to end dooring – and a number of other dangerous behaviors that endanger bicyclists and pedestrians – is to redesign our streets so that bike lanes are physically separated from traffic and parked cars. We encourage DDOT to take a more aggressive and timely approach to its street redesign projects.

D. Penalties for Failing to Yield Right-of-Way

We support the Second Proposal’s proposed increase in the fine for failure to yield the right-of-way to a pedestrian, from \$75 to \$150.

The Agencies should similarly increase the penalty for failing to yield the right-of-way to a bicyclist from \$75 to \$150. Bicyclists are just as vulnerable as pedestrians, and this change would create proportionality and consistency in the rules.

For the same reason, the proposed \$500 fine and 3 point penalty that would apply to a driver that overtakes another vehicle yielding for a pedestrian should be extended to any driver that overtakes another vehicle yielding for a bicyclist.

E. Penalties for Speeding

The Second Proposal would include a \$400 to \$500 fine for speeding more than 25 mph above the speed limit, compared to a \$1000 fine in the First Proposal. We believe the \$400–500 fine is far too modest for this dangerous behavior. The Agencies said it best when issuing the First Proposal: a “\$1,000 fine for this behavior reflects the recklessness such drivers demonstrate.”⁷

The evidence is clear that speeding kills:

- A study by the AAA Foundation for Traffic Safety found that the risk of severe injury for a pedestrian hit at 23 mph is 25 percent. At 31 mph, the risk of severe injury increases to 50 percent. At 39 mph, the rate of severe injury jumps to 75 percent.⁸ At 46 mph, the rate jumps to 90 percent.
- The rate of death for a pedestrian struck by an automobile follows a similar pattern. The average risk of death for a pedestrian reaches 10 percent at an impact speed of

⁷ Vision Zero Action Plan at p. 69.

⁸ AAA Foundation for Traffic Safety, [Impact Speed and a Pedestrian’s Risk of Severe Injury or Death](#) (Sept. 2011).

23 mph, 25 percent at 32 mph, 50 percent at 42 mph, 75 percent at 50 mph, and 90 percent at 58 mph.⁹

- According to AAA research, a person is **74 percent** more likely to be killed if struck by a vehicle traveling at 30 mph than at 25 mph.¹⁰

The District’s default speed limit for residential streets is 25 mph. A driver travelling through dense city streets at least 25 mph above the speed limit – at 50 mph or more – is engaged in deadly behavior that deserves to be punished severely. In our view, a \$1,000 fine for this seriously reckless behavior is an entirely appropriate penalty that, if anything, understates the severity of the offense.

At the very least, the Agencies should consider implementing more granular and escalating fines for speeding more than 25 mph above the speed limit, based on the driver’s speed above 25 mph and the driver’s history of major speeding infractions. For example, the civil fine for a speeding incident could be set as the highest fine that would apply based on the following chart:

Offense	Civil Fine
First offense driving over 25 mph	\$500
First offense driving over 30 mph, or second offense driving over 25 mph	\$1000
First offense driving over 35 mph, second offense driving over 30 mph, or third offense driving over 25 mph	\$2000

IV. Neighborhood Slow Zones

The Second Proposal, like the First Proposal, would expand the 15 mph speed limits that currently apply to roads adjacent to schools and playgrounds to cover roads adjacent to recreational facilities, pools, athletic fields, and senior centers. We support this expansion, but believe the Agencies should make two changes in the final rule.

First, the Second Proposal would provide that the slow zones would only apply to roadways adjacent to schools “serving youth.” The final rule should clarify that high schools “serve youth.” High school students are vulnerable to dangerous drivers, and are also themselves new drivers that pose a risk to others. According to the Centers for Disease Control and Prevention, teenagers ages 15-19 represent only 7% of the U.S. population, but account for 11% of the total costs of motor vehicle injuries.¹¹

⁹ *Id.*

¹⁰ [Why Lowering NYC’s Speed Limit by Just 5 Mph Can Save a Lot of Lives](#), Wired (Nov. 13, 2014).

¹¹ CDC, [Teen Drivers: Get the Facts](#).

Second, the Second Proposal would apply the 15 mph slow zones during the times posted on signs. If there is no sign posting times, the 15 mph speed limit would apply from 7 am to 11 pm. We do not believe any purpose would be served by raising the speed limit from 11 pm to 7 am in those situations. Consistency and predictability matter a great deal when changing behaviors. As a result, the default rule should be that the slow zones apply at all times, unless a sign indicates otherwise.

V. Truck Side Guards

The Second Proposal, like the First Proposal, would implement a side guard requirement for commercial vehicles exceeding 10,000 pounds. While the First Proposal would have made this requirement effective 18 months after the enactment of the Vision Zero Act of 2015, the Second Proposal would make the requirement effective 24 months after the effective date of the rule. Given that the Agencies took more than a year to issue the Second Proposal, and may take several months to finalize the rule, we believe 24 months is needlessly long for a compliance period. A 24 month compliance period would make it very difficult for this requirement to contribute to the Agencies' goal of eliminating traffic deaths and serious injuries by the year 2024.

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Thank you for your consideration of the comments set forth in this letter and for your continued engagement on street safety issues. If you have any questions, please do not hesitate to reach out to me at (202) 518-0524 x205 or greg@waba.org, or Tamara Evans, Advocacy Director of WABA at (202) 518-0524 x212 or tamara.evans@waba.org.

Respectfully submitted,



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