



The cyclist anti-harassment ordinance

A civil cause of action for cyclists harassed by motorists – and a \$1,000 remedy in Los Angeles



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In 2011, the Los Angeles City Council passed the Cyclist Anti-Harassment Ordinance, the first of its kind in a U.S. municipality. (Los Angeles Ordinance number 45.96 et seq.) The Ordinance grants bicyclists a civil cause of action against drivers who harass them. Remedies include \$1,000 or treble damages if the bicyclist is injured,

whichever is greater, plus attorneys' fees, costs of litigation and punitive damages. The Ordinance prohibits drivers from directing the following behaviors toward bicyclists:

- Attempting to physically assault;
- Actually physically assaulting;
- Attempting or threatening to injure, either by words, vehicle, or other object;
- Intentionally distracting or attempting to distract bicyclists;
- Intentionally forcing or attempting to force a bicyclist off a street for purposes unrelated to public safety.

Several other municipalities nationwide have followed or plan to follow suit. Since its passage in Los Angeles, the Ordinance-based frivolous lawsuits that some predicted have failed to materialize. But harassed cyclists still struggle to obtain justice. While grounded in sound policy, its nature renders the Ordinance ineffective for those who need it the most, and those who could use it most effectively.

The Penal Code defines behaviors prohibited by the Ordinance as criminal threats, assault and battery. (See Pen. Code, §§ 240, 242, 243, 422, 4501.) Law enforcement will likely prosecute a battery with a physical injury. And prosecutors must prove beyond a reasonable doubt that the defendant was driving the car, that he was at the scene of the alleged incident, and that his behavior constituted the elements of the charged crime.

Challenges

But the criminal justice system is over-extended and cannot realistically be depended upon to seek redress for harassment of cyclists without physical injury. The Ordinance relieves the

criminal justice system of investigation and prosecution by allowing the plaintiff to seek civil redress whether or not there is physical or property harm. Moreover, the available remedies relieve plaintiffs of the burden of proving damages, and triers of fact in deciding what award is fair.

Yet significant challenges impede the effectiveness of the Ordinance. The primary is evidentiary. Harassed bicyclists need to gather evidence, beginning with ascertaining the identity of the driver. LA's average 20,000 yearly hit-and-runs indicate that drivers who ram cyclists with their cars are unlikely to stop and provide their identities. And few injured cyclists are able to sit up and take pictures of the car that just hit them as it speeds away. Without physical injury, 911 will likely not call the police, who will thus not come to take a report.

Proving intent or that words spoken during the incident exceed the legal exercise of free speech may require balancing the cyclist's word against the driver's. Video proves identities, liability and injuries, yet for many reasons, few cyclists ride with camcorders.

The intentional aspect of harassment makes collectability prohibitive. California Insurance Code section 533 relieves insurance policies from covering intentional torts. Most liability policies *expressly exclude* coverage for damages or injuries that the insured intentionally causes. (Croskey et al., Cal. Practice Guide: Insurance Litigation (The Rutter Group 2014) ¶ 7:241.)

The \$1,000 remedy

Thus the most useful aspect of the Ordinance is the \$1,000 remedy, for which plaintiffs in pro per can file a small claims suit. Whether they are equipped to succeed is a different issue. Attorneys (who can and will help) can direct plaintiffs to court Web sites with advice on how to prosecute small claims, but many laypeople fail to appreciate the necessity of evidentiary rigor and to anticipate an effective defense. Many cyclists are impoverished, unsophisticated and do not speak English, and are even less apt to seek redress without help.

However, if the defendant in a suit brought under the Ordinance has no assets, collecting the award and attorneys' fees are



unlikely. As go fees and costs, so goes the incentive for attorneys to take the case. Consequently many attorneys are unaware of the Ordinance. Still, section 116.530(c)(1) of the Code of Civil Procedure allows attorneys to advise parties on how to file a small claims action. So reasonable attorneys' fees can be recouped in the award.

Bicyclists who record the license plates of drivers who harass them and flee may download a form from the DMV Web site to locate the vehicle's owner (available at <http://apps.dmv.ca.gov/forms/inf/inf70.pdf>.) Vehicle Code section 16370 allows successful plaintiffs to petition the

DMV to suspend the driver's license of a harasser who cannot or will not pay.

Thus, the Ordinance succeeds most by giving cyclists an indirect means of getting suspended the licenses of the drivers who harass them. The State should adopt it and provide an online kit with links to the necessary forms, enabling cyclists to pursue claims on their own. Meanwhile, Los Angeles should provide more guidance for cyclists to seek redress against the drivers who harass them.



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