

OREGON PEDESTRIAN RIGHTS:
**A Legal Guide
for
Persons on Foot**

by Ray Thomas

FIRST EDITION



A PROJECT OF THE WILLAMETTE PEDESTRIAN COALITION



Community and School Traffic Safety Partnership

RESOURCES FOR WALKING IN PORTLAND

Maps & Guidebooks

Neighborhood maps for N, NE, SE and SW Portland
..... www.GettingAroundPortland.org

Classes & Trainings

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..... (503) 413-2672

Portland Walks – Be Safe!
Group Training (503) 823-7100
Film www.portlandonline.com/transportation/index.cfm?c=40554

Pedestrian Safety

City of Portland Office of Transportation Traffic Safety and Neighborhood Livability Hotline
..... (503) 823-SAFE (7233)
..... (503) 823-6868 (TDD)
..... SAFE@pdxtrans.org

I Brake For People Bumper Sticker
..... (503) 823-SAFE (7233)

I Share The Road Bumper Sticker
..... www.portlandonline.com/transportation/index.cfm?c=40554

I Share The Road Pledge Forms
..... www.portlandonline.com/transportation/index.cfm?c=40513

Neighborhood Yard Signs
..... www.portlandonline.com/transportation/index.cfm?c=40513

Portable Speed Reader Board
..... www.portlandonline.com/transportation/index.cfm?c=40513

Transit

TriMet Public Transportation for Bus, MAX Lightrail,
WES Commuter Rail and Portland Streetcar (503) 238-RIDE (7433)
..... trimet.org



A WORD FROM THE WILLAMETTE PEDESTRIAN COALITION 1

Part I: Introduction

Introduction 5

Part II: The Basics

What Is A Pedestrian? 15
The Ebb And Flow Of Pedestrian Rights In The Crosswalk 17
Pedestrians And Sidewalks 27
Pedestrians And Roadway Shoulders 29
Pedestrian Rights On Bicycle Lanes And Bikeways 33
Pedestrian Rights On The Roadway 35

Part III: Pedestrian Legal Advocacy

Pedestrian Rights To Development Of Facilities: Getting Our Share 39
No ID Required 47
The “Bad” Pedestrian – Jaywalking And The Law 51
Vulnerable Roadway User: A New Remedy Against Careless Drivers 53
Bicyclists Must Mix with Pedestrians on Sidewalks 61
Skateboards And Rollerblades Same Legal Status As Bikes In Portland 65

Part IV: Pedestrian Legal Remedies

Accidents And Insurance 73
What To Do If You’re In An Accident 75
Citizen Initiated Prosecution 79
Getting Medical Bills Paid And Wage Loss Reimbursed 85
Personal Injury Protection Statutes 89
 742.520 Personal injury protection benefits for motor vehicle liability policies;
 applicability; definitions for ORS 742.520 to 742.542. 89
 742.522 Binding arbitration under ORS 742.520; costs. 90
 742.524 Contents of personal injury protection benefits; deductibles. 90
 742.526 Primary nature of benefits. 92
 742.528 Notice of denial of payment of benefits. 92
 742.530 Exclusions from coverage. 92
 742.532 Benefits may be more favorable than those required by ORS 742.520,
 742.524 and 742.530. 92
 742.534 Reimbursement of other insurers paying benefits; arbitrating issues of
 liability and amount of reimbursement. 93
 742.536 Notice of claim or legal action to insurer; insurer to elect manner of
 recovery of benefits furnished; lien of insurer. 93
 742.538 Subrogation rights of insurers to certain amounts received by claimant;
 recovery actions against persons causing injury. 94
 742.542 Effect of personal injury protection benefits paid. 95
 742.544 Reimbursement for personal injury protection benefits paid. 95

Part V: Traffic Laws Relating to Pedestrians

Oregon Revised Statutes (ORS) 99
 153.018 Schedule of penalties. 99
 153.093 Minimum fine. 100
 166.025 Disorderly conduct in the second degree. 100
 366.514 Use of highway fund for footpaths and bicycle trails. 101
 742.518 Definitions for ORS 742.518 to 742.542. 102
 801.026 General exemptions; exceptions. 102
 801.045 Permissive use of private roadway. 103
 801.220 “Crosswalk.” 104
 801.305 “Highway.” 104
 801.320 “Intersection.” 104
 801.385 “Pedestrian.” 105

801.440 "Right of way." 105
801.480 "Shoulder." 105
801.485 "Sidewalk." 105
810.020 Regulating use of throughway. 106
811.005 Duty to exercise due care. 106
811.015 Failure to obey traffic patrol member; penalty. 106
811.020 Passing stopped vehicle at crosswalk; penalty. 107
811.025 Failure to yield to pedestrian on sidewalk; penalty. 107
811.028 Failure to stop and remain stopped for pedestrian; penalty. 107
811.035 Failure to stop and remain stopped for blind pedestrian; penalty. 108
811.060 Vehicular assault of bicyclist or pedestrian; penalty. 109
811.165 Failure to stop for passenger loading of public transit vehicle; penalty. 109
811.233 Failure to yield right of way to highway worker; penalty. 110
811.490 Improper opening or leaving open of vehicle door; penalty. 110
811.505 Failure to stop when emerging from alley, driveway or building; penalty. 111
811.510 Dangerous operation around livestock; penalty. 111
811.550 Places where stopping, standing and parking prohibited. 111
811.555 Illegal stopping, standing or parking; affirmative defense; penalty. 114
811.560 Exemptions from prohibitions on stopping, standing and parking. 114
814.010 Appropriate responses to traffic control devices. 115
814.020 Failure to obey traffic control device; penalty. 116
814.030 Failure to obey bridge or railroad signal; penalty. 116
814.040 Failure to yield to vehicle; penalty. 116
814.050 Failure to yield to ambulance or emergency vehicle; penalty. 117
814.060 Failure to use pedestrian tunnel or overhead crossing; penalty. 117
814.070 Improper position upon or improperly proceeding along highway; penalty. 117
814.080 Unlawful hitchhiking; penalty. 118
814.100 Rights of driver and passengers of disabled vehicle on freeway. 118
814.110 Rights for blind or blind and deaf pedestrians. 119
814.150 Failure to perform duties of person in charge of livestock on highway; penalty. 119
814.210 Operation of moped on sidewalk or bicycle trail; penalty. 120
814.410 Unsafe operation of bicycle on sidewalk; penalty. 120
814.524 Unsafe operation of motor assisted scooter on sidewalk; penalty. 121
814.526 Unsafe operation of motor assisted scooter on bicycle path or lane; penalty. 121
814.550 Application of vehicle laws to electric personal assistive mobility device. 121
814.552 Unsafe operation of electric personal assistive mobility device; penalty. 122
OAR 125-090-0120 Safety Rules 123
OAR 734-020-0060 Design and Construction of Bikeways 123

Section VI: City Ordinances Relating to Pedestrians

ALBANY MUNICIPAL CODE 127
13.28.010 Use of sidewalks. 127
13.28.020 Crossing at right angles. 127
13.28.030 Use of crosswalk required. 127
ASHLAND MUNICIPAL CODE 127
11.08.110 Pedestrian. 127
11.44.010 Use of sidewalks. 127
11.44.020 Crossing at right angles. 127
11.44.030 Crosswalk - Use required. 127
ASTORIA CITY CODE 128
6.150 Crossing at Right Angles. 128
6.155 Pedestrians Must Use Crosswalks. 128
BEAVERTON MUNICIPAL CODE 128
6.02.500 Use of Sidewalks. 128
6.02.510 Pedestrian Must Use Available Crosswalk. 128
6.02.520 Right Angles. 128

- EUGENE CITY CODE 128
 - 5.425 Right Angles. 128
- GRESHAM MUNICIPAL CODE 128
 - Section 8.55.010 Pedestrians. 128
- MILWAUKIE MUNICIPAL CODE 129
 - 10.24.010 Regulations. 129
- OREGON CITY MUNICIPAL CODE 129
 - 10.28.010 Jaywalking. 129
- PORTLAND CITY CODE 129
 - 16.70.210 Must Use Crosswalks. 129
 - 16.70.220 Must Cross at Right Angles. 129
 - 16.70.230 To Obey Directions of School Traffic Patrol and Crossing Guard. 129
 - 16.70.240 Bridge Railings. 129
 - 16.70.750 Penalty. 130
- SANDY CITY CODE 130
 - 10.34.010 Unlawful street obstruction. 130
 - 10.32.010 Use of sidewalks. 130
 - 10.32.030 Right angles. 130
 - 10.32.040 Obedience to traffic lights. 130
- SCAPPOOSE MUNICIPAL CODE OF ORDINANCES 130
 - 11.04.240 Pedestrians – Use of crosswalks required. 130
 - 11.04.250 Street crossing – Right angles. 131
 - 11.04.110 Obstructing streets. 131
- SPRINGFIELD MUNICIPAL CODE 131
 - 6.410 Pedestrians. 131
 - 6.110 Obstructing Streets. 131
 - 6.115 Use of Sidewalks. 131
 - 6.120 Play Vehicles Restricted. 131
- ST. HELENS MUNICIPAL CODE 131
 - 10.04.250 Pedestrians must use crosswalks. 131
 - 10.04.260 Right angles. 131
- STAYTON CITY CODE 131
 - 10.32.810 Crossing Streets at Right Angles. 131
- TIGARD MUNICIPAL CODE 132
 - 10.32.060 Use Of Sidewalks. 132
 - 10.32.235 Use of Crosswalks (Jaywalking). 132
- TROUTDALE CITY ORDINANCES 132
 - 10.20.010 Use of crosswalks required. 132
 - 10.20.020 Crossing streets at right angles. 132
- WEST LINN MUNICIPAL CODE 132
 - 8.02.120 Pedestrian traffic. 132
- WOODBURN CITY ORDINANCES 133
 - Section 32. Right Angles. 133
 - Section 33. Use of Available Crosswalk. 133
- YAMHILL ACTIVE MUNICIPAL CODE 133
 - 6.08.090 Pedestrians Must Use Crosswalks. 133
 - 6.08.100 Right Angles. 133

Section VII: Rules Relating to Insurance

- Insurance Company Rules and Regulations 137
 - ORS 746.230 Unfair claim settlement practices. 137
 - OAR 836-080-0220 Misrepresentation and other prohibited claim practices. 138
 - OAR 836-080-0225 Required claim communication practices. 138
 - OAR 836-080-0230 Standard for Prompt Claim Investigation. 139

Section VIII: Additional Resources

- Additional Resources 143

A Word From The Willamette Pedestrian Coalition

We hope you find this legal guide to be a useful resource for understanding pedestrian rights in Oregon. *Oregon Pedestrian Rights: A Legal Guide for Persons on Foot* is a part of the education program of the Willamette Pedestrian Coalition (WPC). The WPC is a non-profit pedestrian advocacy group working to improve conditions for pedestrians in the Portland metro area and the State of Oregon. WPC has been organized for empowerment, education, funding for pedestrian projects, safety improvements, better laws, and greater enforcement. Founded in 1991, WPC continues to be a voice for walkers, young and old. WPC organizes major media events and joins with public and private groups to support safe and attractive walking conditions for pedestrians, including schoolchildren and the elderly, throughout the region.

I invite you to join the Willamette Pedestrian Coalition by becoming a member. Copy and fill out the form on the next page and become a part of the movement! You will help us represent pedestrians and increase the voice of those who choose to use their feet or assistance devices to propel themselves for exercise, for transportation, and fun to their destinations. Walking is sustainable; it is good for you and good for the environment. Walking gets you there.

Keep Walking,

Mike Dennis
WPC President

Spring 2008

YES! I want to join the

Willamette Pedestrian Coalition!

Your membership contribution is tax-deductible. If your employer will match your contribution, please include a form from your personnel office. Tax id 93-1078749

MEMBERSHIP

Individual & Family:

- Senior \$15
- Family \$60
- Individual \$35
- Tread Lightly \$_____

Organization, Corporation, Business:

- Bronze \$150
- Gold \$500
- Silver \$250
- Platinum \$1,000

Name _____

Address _____

City, State, Zip _____

Phone(s) _____

Email _____

- I would like to receive e-mail ALERTS
- I would like to VOLUNTEER

Neighborhoods in the Portland Metro area where pedestrian issues concern me most are _____

- I would like to receive a pedestrian safety packet
- Enclosed is my check for Annual Membership

Thank You!

Willamette Pedestrian Coalition

P.O. Box 2252, Portland, OR 97208-2252 Phone: 503-223-1597

Email: info@wpcwalks.org Web: www.wpcwalks.org

Part I: Introduction

Introduction

Work to create an Oregon legal movement for non-motorized roadway users

Walking on two legs is the original and definitive human transportation. Upright locomotion distinguished us from our evolutionary forbears and remained for some 100,000 years the primary way to get from point A to point B on land. Walking got most people 99.9% of the way through human history. But since Ford made four wheels affordable, Rockefeller sold us five bucks worth of regular, and Eisenhower built the interstate highway system, the Faustian ascendancy of motorized transport has been inexorable and accelerating. We now find ourselves at a pivot-point in urban transportation, having realized, along with a small but increasing number of cities worldwide, that the future of getting around in cities will have to mean fewer cars and more human powered motion. We need to reevaluate and reestablish the norms that define relations among pedestrians, bicycles, public transport and the automobile.

It is time to band together with all non-motorized user groups and pursue our common goal of making Oregon's roads safer. Significant progress has already been made in recent years by the activist bicyclist movement and efforts to increase the safety of roadway workers and reduce speeds in neighborhoods and school zones. Now the Willamette Pedestrian Coalition, which has advocated for improved safety for pedestrians since 1991, is expanding its work to include a new legal education program that includes this new legal guide. It's an authoritative primer on Oregon's traffic laws, containing articles and sections of the Oregon Revised Statutes (ORS), and it's also available online as a .PDF file at www.oregonpedestrianrights.com.

Oregon's roadways must be made safer for non-motorized roadway users. The Oregon Health Department and State Epidemiologist have both publicly recognized that getting people out of cars for transport is a serious health priority, both to counter global warming and to improve

personal health through exercise. State planners and political leaders are almost unanimous in their support for reducing reliance on motor vehicles for neighborhood errands, downtown trips, and transport of school children. Yet the folks who actually put in the miles on foot are forced to dodge cars and contend with dangerous intersections and roadways every day. Roadway safety for non-motorized users must improve before increased numbers of Oregonians are going to be willing to leave the relative safety of their cars and walk or ride a bike.

A first step is to learn about the basic legal rights that all non-motorized road users have to the right of way on sidewalks and in crosswalks. A second step is to contribute to creating a group consciousness around the natural alliance of all folks on the road outside of cars. A third step is to work to enforce and improve the laws, on the street, in the courts and in the legislature.

Pedestrians have important legal rights, but few people, on foot or in cars, really understand the basic legal rules for sidewalks, crosswalks and streets. Pedestrians and motorists who view each other with ignorance and suspicion are unlikely to team up to create a positive cooperative atmosphere on the street. If people think streets aren't safe, people won't walk.

The Willamette Pedestrian Coalition has now launched a series of legal clinics to teach people about their rights (and responsibilities) on the roadway. The WPC Legal Clinics provide an overview of legal rights and how to use the law to improve safety on the street. Clinics teach the basics about pedestrian laws and how to use the laws to prosecute dangerous drivers. For example, Oregon Revised Statute (ORS) 153.058 gives citizens the legal right to prosecute and convict dangerous drivers in traffic court for common traffic violations like Failing to Stop and Remain Stopped for a Pedestrian in a Crosswalk (ORS 811.028) and Failure to Yield to a Pedestrian On a Sidewalk (ORS 811.025). And when a "Vulnerable Roadway User" (defined as a pedestrian, highway worker, bicyclist, skateboarder, roller blader or farm worker) is injured or killed by a careless driver, a new law passed by the 2007 Oregon Legislature creates enhanced penalties, including community service, traffic safety and driver improvement programs, or a fine of up to \$12,500 and mandatory one year license suspension.

Please support the Willamette Pedestrian Coalition's efforts to improve safety on Oregon's roadways. Visit their website at www.wpcwalks.org, join, contribute, volunteer!

Why a pedestrian handbook?

Does Oregon need a pedestrian rights handbook? The answer is yes, unless you accept the status quo: pedestrian deaths totaled one-third of all traffic fatalities in the City of Portland in 2006; eleven pedestrians are killed and more than 300 injured in Oregon each year while attempting to exercise their lawful right of way to cross the road within a crosswalk; and a pedestrian is 130 times more likely to die in a collision than a motor vehicle occupant. While an argument can be made that these injuries and deaths would be reduced if pedestrian access were restricted by placing more humans into enclosed steel vehicles, the vitality of the human race mandates movement in the opposite direction — streets need to be made safer for pedestrians and humans need to use their bodies to transport themselves.

Parents believe that neighborhood streets are so unsafe that they must deliver their children by automobile to school. Later, those same children will look to cars as the transportation choice of first resort no matter what the distance. While most Portland children walked or biked to school in 1970, only a handful risk it now (66% in 1970; 8% in 2002). While the dangers associated with non-motorized travel are very real, the solution lies not in creating fewer pedestrians, but in making the streets safer by planning for non-motorized traffic, preventing bad drivers from getting behind the wheel, and learning about, expanding upon and improving pedestrian laws.

Walking as a fundamental right

A free society provides citizens with the right to walk about freely and safely. Our freedom of lawful assembly depends on the right of access to public property and must be defended at every opportunity. It is actually a crime in Oregon to “disrupt” pedestrian traffic on a public way or to “disturb” a lawful assembly under the Oregon Criminal Code section called “Disorderly Conduct”. ORS 166.025.

Ebb and flow of pedestrian culture

Legal and legislative support of the pedestrian’s right to proceed on foot has expanded and contracted with historical and technological developments and customs. Shortly after the turn of the 20th Century, early motorized vehicles were considered a hazard, scaring horses and endangering pedestrians. In the 1940’s society embraced development of a high-speed road system and the use of labor-saving devices. New suburban housing developments eliminated sidewalks as too costly and unnecessary. But in the 1970’s, a new awareness dawned that high-speed automobile thoroughfares and subdivisions without sidewalks were

dicing neighborhoods into small sections without pedestrian corridors to stores, schools and other common destinations.

The increasing cost of fossil fuel, concerns about obesity and widespread helplessness and dependence on motors and servomechanisms led forward-thinking planners to create pedestrian and bicycle facilities in order to encourage people to use their bodies once again. Unfortunately, for many, the shift was difficult to reverse as it only took about two decades for parents to shift from expecting their children to walk to school to insisting on delivering them by car. Safe Routes to School Programs, bicycle lanes and boulevards, pedestrian corridors and shared use paths were all designed to reverse the trend toward a sedentary population, but the change has been slow because pedestrian facilities had been largely eliminated or allowed to deteriorate.

Oregon's pedestrian legal culture needs support

Fortunately, Oregon has worked hard to move its citizens in a healthy direction with its well-organized bicycle- and pedestrian-advocacy communities prodding policy- and decision-makers. The "one percent" rule requiring that at least one-percent of state highway funds be spent for nonmotorized travel (ORS 366.514) provides a legal basis for advocacy and, if necessary, litigation to enforce development of nonmotorized transportation. Oregon's broad definition of "sidewalk" as a place that is "capable of being used by a pedestrian" greatly expands pedestrian rights of access beyond the traditional paved neighborhood sidewalk. In addition, Oregon law gives a citizen the right to prosecute a traffic violator in court, without a lawyer, with the same consequences for conviction as if a traffic officer had cited the defendant. ORS 153.058. And the 2005 Oregon Legislature attempted to safeguard pedestrian rights when it passed ORS 811.028, requiring vehicles to yield the lane of travel and at least six feet or the entire next lane to people crossing in both marked and unmarked crosswalks.

While creation of nonmotorized facilities in roadways will be certain to improve pedestrian safety, higher numbers of people walking will also increase the number of collisions, even though experience has shown that the rate of injuries goes down as pedestrian numbers rise. So long as pedestrians are trying to negotiate their way around high-speed motorized traffic, mass and velocity differences will result in high energy transfers in collisions.

One solution is to create enhanced penalties for motorists who fail to recognize the rights of vulnerable users on the roadway. The 2007 Oregon legislature recognized the importance of the Vulnerable User

Concept when they passed into law the enhanced penalty contained in HB 3314, which became effective January 1, 2008. However, enhanced penalty programs that do not lead to incarceration for repeat offenders will do little to safeguard vulnerable users from drivers who insist on driving after their licenses have been suspended and insurance cancelled. Far too many catastrophic injuries are caused by drivers who are suspended and uninsured. Until criminal prosecution of suspended drivers who cause accidents becomes a higher priority, we are all vulnerable to a collision with someone who has repeatedly demonstrated the inability or refusal to drive safely.

Pedestrian vulnerability necessitates improved motorist safety

While some pedestrian collisions occur because of errors in technique or basic unfamiliarity with the operation of a vehicle, too many are caused by errors in judgment that are not so easily avoided. The emerging science of cognitive psychology provides us with a useful model to analyze how people make choices when they are uncertain. Understanding how drivers make choices when they are uncertain leads to a better understanding that the decision-making process of a driver who turns a corner and strikes a pedestrian is often based upon fundamental mistakes in logical thinking. Such mistakes cannot be prevented because the person will predictably repeat the same wrong choice. Those likely to commit such errors in judgment can be identified by their poor driving histories. In a society in which ownership and operation of a motor vehicle is mistakenly considered a fundamental right by many people, and in which the state fails to provide a rigorous evaluation and enforcement administration for management of the driving public, success in preventing dangerous drivers from getting behind the wheel is unlikely anytime soon.

Safety advocates have developed a host of “traffic calming” strategies, which all basically lower traffic speed. But until dangerous and bad drivers are deterred from motor vehicle operation, too many drivers who should never be driving in the first place and are largely unreachable through traditional safety programs will remain on the roads.

Legal reform is difficult

Another impediment to development of a safer environment for pedestrians is the reluctance to allow nonmotorized travel to interfere with ease of motorized transportation. For example, when SB 537, the pedestrian hand-signal bill, was introduced in the 2007 Oregon legislature, criticism of the provision came from unexpected quarters. The bill, which the Oregon Senate passed but the Oregon House failed to pass,

would have mandated that motorists stop for pedestrians in crosswalks if the pedestrian signaled with an upraised hand the intention to enter the crosswalk. The fear expressed by many legislators, who said they supported improved pedestrian safety, was that the hand-signal bill would have fundamentally changed the power structure in congested traffic and allowed pedestrians to create gridlock by exercising their right of way and bringing traffic to a standstill. However, the alternative is grim from a pedestrian standpoint because, while pedestrians have the right of way in a crosswalk, the only way to obtain the right of way is to actually enter the crosswalk, which requires moving from the safety of the curb into the roadway.

Every motorist has the experience of watching pedestrians, who possess the legal right of way if they stepped off of the curb, waiting uneasily for cars to pass because the pedestrian knows motorists are unlikely to recognize the pedestrian's legal rights to bring traffic to a stop. Requiring Oregon pedestrians to enter the crosswalk to claim their right of way is difficult to teach and practically impossible for police to enforce. The pedestrian has the right, but is afraid to use it. The current system creates ignorance and confusion when pedestrians and motorized vehicles mix. If the Oregon House had followed the leadership of the Senate, and passed the hand-signal bill into law, Oregon would have led the nation in pedestrian safety practices, following the lead of Norway, which has successfully used the hand-signal concept for years and has a population-adjusted pedestrian fatality rate of 50% less than the United States (.83 in Norway, versus 1.67 persons killed per 100,000 in the United States).

About this legal guide

The purpose of *Oregon Pedestrian Rights: A Legal Guide for Persons on Foot* is to provide an authoritative reference that includes the actual text of Oregon's statutes and rules of law governing pedestrians. "Knowledge is Power" and this guide is made available in electronic and hard-copy format in order to spread consciousness about pedestrian rights, and to encourage Oregon pedestrians to improve conditions for all non-motorized roadway users. It is our hope that by swiping away at the uncertainty about what the law actually requires, pedestrians will be more confident, on the street, in court and in the legislature. While an interpretive guide to the law is helpful (and we have included articles, commentary, and resources to assist the reader), a direct relationship with the actual text of the laws contained in the Oregon Revised Statutes (cited as "ORS" followed by the statute number) is necessary to cut through the superstition, urban myths and "just really wrong stuff" that people think about the law. While the language in the statutes has its

own system of grammar and punctuation, the Oregon Vehicle Code is an important if somewhat unwieldy historic structure containing the legal foundation of pedestrian rights and limits on the street.

We have also painstakingly assembled and included numerous city ordinances governing Oregon's pedestrians, many of which are a complete surprise to the folks who live in those places. Our companion book *Pedal Power: A Legal Guide for Oregon Bicyclists* contains a number of topics that may be helpful for pedestrians such as laws governing dogs, insurance rules and regulations, and online resources. It may be found on our website, www.stc-law.com, in many area bike stores and the offices of the Bicycle Transportation Alliance (BTA, www.bta4bikes.org).

Thanks go to Margaret Weddell for the idea that we should create a pedestrian legal guide and for the section on insurance, and to Jim Coon for contributing, editing, and generally tuning up this legal guide.

Part II: The Basics

What Is A Pedestrian?

Oregon law defines “pedestrian” as “any person afoot or in a wheelchair”. ORS 801.385. This broad definition probably includes people on foot as well as foot/wheel combinations: walkers, runners, highway workers, bladders, skateboarders and persons using a foot on the ground to propel a scooter or bicycle, as well as people rolling in a wheelchair.

The basis for government power to control the movements of pedestrians on Oregon’s highways and sidewalks is contained in ORS 810.080. This provision provides “local road authorities” with the power to regulate pedestrian traffic by creating or closing crosswalks, including mandating that pedestrians only cross within a crosswalk. State delegation of control over particular locations to local authorities who have maintenance and law enforcement responsibility over an area makes sense, but also creates additional levels of rules that have the force of law and requires checking state, county and city laws to learn what pedestrians may do on the street. For example, Oregon law allows pedestrians to cross the road at any point, but the City of Portland requires that pedestrians must use a crosswalk if one is available within 150 feet. Few jurisdictions provide adequate signs to warn pedestrians of what the local rules require, a potential trap for the unwary — a violation of local rules may include the potential for harsh penalties. In Portland a violation of the 150-foot rule carries a maximum fine of \$500 and up to 10 days in jail! (Portland City Code 16.70.210). Any person cited for an offense with such a large potential penalty should appear before a judge and explain any mitigating circumstances as there will almost always be a diversion or traffic education option to avoid financial hardship.

Of course local ordinances carry the potential for abuse by unequal application, particularly where there are no signs visible to warn citizens of their rules. Ignorance of the law is no excuse in a court of law, but it sure is a point worth making if you receive a ticket for violating some rule you never knew existed. The section on local rules contained in this legal guide does contain many provisions for Oregon’s larger cities and a

quick perusal of the contents demonstrates that municipalities take full advantage of their power to regulate how and where pedestrians may cross the street. For example, how many people know Portland requires that pedestrians cross the street at right angles when not in a crosswalk? (Portland City Code 16.70.220). These local laws are on the books but are seldom enforced, except when a violator is a member of an unpopular group or when a person gets hurt by a motorist and an insurance company raises the technical legal violation in court to defend against an injury claim. Knowing your legal rights as a pedestrian includes identifying the legal traps in advance of a problem.

The Ebb And Flow Of Pedestrian Rights In The Crosswalk

Nothing better illustrates the history of the push and pull between pedestrian and motorized vehicle rights than the ebb and flow of pedestrian right of way in crosswalks. As car usage increased and highways became freeways, pedestrian corridors were obliterated in neighborhoods. As modern culture placed increasing numbers of humans into motorized vehicles, multi-lane roadways stretched the distance pedestrians required for crossing safely. And while overall pedestrian death totals became lower each year, the primary cause was fewer people walking. Modernization efforts by the Oregon Legislature qualified and eroded the pedestrian right of way in crosswalks until the end of the twentieth century, when proponents of nonmotorized travel promoted making way for human powered roadway users in an Oregon landscape that included livability, fitness, environmental and fuel-saving themes. This work significantly expanded pedestrian rights and encouraged pedestrian use of the roadways.

History of pedestrian crosswalk rights in Oregon

In *Plasker v. Fazio*, 259 Or 171 (1971) the Oregon Supreme Court noted:

When Oregon in 1931 enacted the Uniform Act Regulating Traffic On Highways, it provided in mandatory terms '[t]he driver of any vehicle shall yield the right of way to a pedestrian crossing the roadway within any marked crosswalk***'. The only qualification was contained in the provision that the right of way did not relieve the pedestrian of the duty to exercise due care.

In what the court stated was a "drastic" qualification of the pedestrian's right of way, the 1941 Oregon Legislature limited driver duties to yielding the right of way to pedestrians in marked crosswalks on the half of the roadway upon which the vehicle was traveling or was approaching so closely from the opposite half of the roadway as to be a danger, which in effect halved the area of right of way for the pedestrian in a crosswalk.

The other change imposed a mandatory duty on the part of pedestrians not to “leave the curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield”.

The duty of the pedestrian was further revised in 1947 when the Legislature not only rejected an effort to restore the pedestrian’s curb-to-curb right of way, but it also added the phrase “or in crossing” to the requirement that the pedestrian not enter the roadway in front of a vehicle. The 1947 law imposed a new level of restriction on pedestrians’ rights because it broke the pedestrian right of way into segments; under the new law a pedestrian was required to wait or turn back if a car was coming even if the coast was clear when they left the curb to cross the road, if the car came so close as to be a hazard “in crossing”.

In 1971, the Oregon Supreme Court broke with other more pedestrian-protective jurisdictions in interpreting what “other places of safety” actually meant in deciding what area a pedestrian was not supposed to leave when a car was approaching. Other states interpreted the same language to mean areas off of the side of the road or at the curb, but the Oregon Court concluded it meant the middle of the road. This further eroded the pedestrian right of way and left pedestrians without any legal protection when cars approached while they were lawfully crossing the street. Pedestrians were now required to re-evaluate their decision to cross the roadway before crossing to the other half of a road in order to determine whether traffic was so close that it would be “impossible for the driver to yield.”

In 1983 the legislature changed the duty of the driver from being required to stop up until the point when it was “impossible for the driver to yield,” to the present requirement in ORS 814.040 to yield to the pedestrian when the vehicle is “so close as to constitute an immediate hazard”. The change from “impossible to yield” to “an immediate hazard” further undercut the right of way because the question of what is so close as to constitute an “immediate hazard” is capable of wide interpretation and provides drivers the excuse that they did not think they could stop in time so they tried to drive around the pedestrian without stopping.

Current law on crosswalk right of way

Beginning in the mid-1970’s attitudes toward non-motorized roadway use (including bicycles) began to change. Urban planners began insisting that sidewalks and crosswalks be included in subdivisions, and bike paths and other innovations were looked upon as improvements over congested

highways and partial solutions to a future that would include regular gas shortages and steep price increases.

As roads became more complex and corridors for bicycling and walking were recognized, a desirable definition of “crosswalk” needed to include both developed and undeveloped areas, marked and unmarked crosswalks. The current Oregon definition of crosswalk has served its role well and has not changed since its present structure was created in 1975:

“Crosswalk” means any portion of a roadway at an intersection or elsewhere that is distinctly indicated for pedestrian crossing by lines or other markings on the surface of the roadway that conform in design to the standards established for crosswalks under ORS 810.200. Whenever marked crosswalks have been indicated, such crosswalks and no other shall be deemed lawful across such roadway at that intersection. Where no marked crosswalk exists, a crosswalk is that portion of the roadway described in the following:

- (1) Where sidewalks, shoulders or a combination thereof exists, a crosswalk is the portion of a roadway at an intersection, not more than 20 feet in width as measured from the prolongation of the lateral line of the roadway toward the prolongation of the adjacent property line, that is included within:
 - (a) The connections of the lateral lines of the sidewalks, shoulders or a combination thereof on opposite sides of the street or highway measured from the curbs or, in the absence of curbs, from the edges of the traveled roadway; or
 - (b) The prolongation of the lateral lines of a sidewalk, shoulder or both, to the sidewalk or shoulder on the opposite side of the street, if the prolongation would meet such sidewalk or shoulder.
- (2) If there is neither sidewalk nor shoulder, a crosswalk is the portion of the roadway at an intersection, measuring not less than six feet in width, that would be included within the prolongation of the lateral lines of the sidewalk, shoulder or both on the opposite side of the street or highway if there were a sidewalk. ORS 801.220. The statute language is technical, but it provides that an unmarked crosswalk exists where one would expect to find one between intersecting shoulders or sidewalks. In irregularly shaped intersections, such as where sidewalks are of different widths or roadways intersect at varying angles, crosswalks may be trapezoidal in shape, but the statute still requires that the crosswalk be no less than six or more than 20 feet in width.

These developments have provided the backdrop for Oregon’s 2005 legislature, which substantially expanded the rights of pedestrians in crosswalks. What began as a simple legislative clarification that bike lanes should not be considered as additional lanes that would reduce pedestrian right of way evolved into an overhaul of Oregon pedestrian rights that reestablished the pedestrian right of way in a crosswalk across an entire two-lane roadway where there is no traffic control device. But this change imposed a limit on the pedestrian right of way at intersections with traffic lights to the lane of pedestrian occupancy and six additional feet (so as to facilitate efficient movement of traffic in con-

gested urban environments such as Portland’s downtown.) The 2005 law for pedestrians in crosswalks is contained in OR 811.028 (“Failure to stop and remain stopped for pedestrian; penalty”):

- (1) The driver of a vehicle commits the offense of failure to stop and remain stopped for a pedestrian if the driver does not stop and remain stopped for a pedestrian when the pedestrian is:
 - (a) Proceeding in accordance with a traffic control device as provided under ORS 814.010 or crossing the roadway in a crosswalk, as defined in ORS 801.220; and
 - (b) In any of the following locations:
 - (A) In the lane in which the driver’s vehicle is traveling;
 - (B) In a lane adjacent to the lane in which the driver’s vehicle is traveling;
 - (C) In the lane into which the driver’s vehicle is turning;
 - (D) In a lane adjacent to the lane into which the driver’s vehicle is turning, if the driver is making a turn at an intersection that does not have a traffic control device under which a pedestrian may proceed as provided under ORS 814.010; or
 - (E) Less than six feet from the lane into which the driver’s vehicle is turning, if the driver is making a turn at an intersection that has a traffic control device under which a pedestrian may proceed as provided under ORS 814.010.
- (2) For the purpose of this section, a bicycle lane or the part of a roadway where a vehicle stops, stands or parks that is adjacent to a lane of travel is considered to be part of that adjacent lane of travel.
- (3) This section does not require a driver to stop and remain stopped for a pedestrian under any of the following circumstances:
 - (a) Upon a roadway with a safety island, if the driver is proceeding along the half of the roadway on the far side of the safety island from the pedestrian; or
 - (b) Where a pedestrian tunnel or overhead crossing has been provided at or near a crosswalk.
- (4) The offense described in this section, failure to stop and remain stopped for a pedestrian, is a Class B traffic violation.

The current statute may contain a legislative punctuation anomaly that somewhat expands pedestrian rights, and may go even further than the legislature intended. The literal meaning of the statute as presently punctuated seems to provide that even if a pedestrian is crossing unlawfully against a “don’t walk” signal in a crosswalk, all approaching drivers must still stop and remain stopped or violate this statute. While ORS 814.020 (“Failure to Obey Traffic Control Device”) prohibits “jaywalking”, the current law nevertheless appears to require that drivers must stop and remain stopped while pedestrians in crosswalks cross against the “don’t

walk” signal for the lane plus six additional feet. It may be argued that this is a fair result anyway, since drivers should have to stop for humans even if they are illegally occupying the crosswalk in front of the vehicle.

Pedestrian crosswalk responsibility

ORS 811.028, discussed above, requires that approaching drivers stop and remain stopped for pedestrians in a crosswalk, but ORS 814.040 states that the pedestrian may not dart into the street in front of a motor vehicle that is “so close as to constitute an immediate hazard,” the legal distance limit on the pedestrian right of way. “Right of way” is defined in ORS 801.440 as the right to precedence where circumstances “give rise to danger of collision”:

801.440 “Right of way.”

“Right of way” means the right of one vehicle or pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian approaching under such circumstances of direction, speed and proximity as to give rise to danger of collision unless one grants precedence to the other.

While motor vehicles approaching an intersection with a red light or stop sign are required to stop for the “traffic control device”, at unsignal- led intersections, on the other hand, the pedestrian right of way in the crosswalk is the sole legal authority requiring a stop. And this authority may only be lawfully be exercised by a pedestrian when the motor vehicle is far enough way that it is not “so close as to constitute an immediate hazard,” which is described in ORS 814.040.

ORS 814.040 provides:

814.040 Failure to yield to vehicle; penalty.

- (1) A pedestrian commits the offense of pedestrian failure to yield to a vehicle if the pedestrian does any of the following:
 - (a) Suddenly leaves a curb or other place of safety and moves into the path of a vehicle that is so close as to constitute an immediate hazard.
 - (b) Fails to yield the right of way to a vehicle upon a roadway when the pedestrian is crossing the roadway at any point other than within a marked crosswalk or an unmarked crosswalk at an intersection.
 - (c) Except as otherwise provided under the vehicle code, fails to yield the right of way to all vehicles upon the roadway.
- (2) The offense described in this section, pedestrian failure to yield to a vehicle, is a Class D traffic violation.

What does “so close as to constitute an immediate hazard” mean?

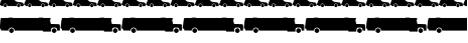
When does the motor vehicle have a legal obligation to stop and remain stopped for the pedestrian in the crosswalk? How does a person crossing

a street in the crosswalk know how far back a car has to be before the pedestrian can legally step off of the curb and trigger the right of way even if it means the car has to stop and stay stopped until the pedestrian is across the street?

The pedestrian right of way is triggered when the pedestrian steps off the curb into the crosswalk. While standing patiently at the corner at a crosswalk and waiting for a gap in traffic is the only way to avoid a potentially dangerous contact with a motorist, the law nevertheless requires that approaching vehicles slow and stop if necessary for the crossing pedestrian. Of course if there is a stop sign or red light in place, the car must stop anyway. But often pedestrians must make their way across a street where there simply is not sufficient room between cars to allow full passage across the street in the crosswalk without cars having to slow or stop.

Standing on the curb and hoping cars will stop is like asking permission to receive what is already yours. Confusion over crosswalk law leads many pedestrians to frustration over how best to approach crossings in crosswalks on streets with high traffic volume but low vehicle speeds. Oregon law is clear that stepping off the curb is “crossing” for purposes of triggering the duty to stop (however, greater protection is provided to blind pedestrians; ORS 811.035 requires vehicles to also stop when the blind pedestrian is “about to cross” a roadway). While stepping off the curb into the street or road subjects the pedestrian to possible injury from approaching traffic, there is no other way under current Oregon law to exercise the right of way in the crosswalk.

Roadside determination based upon speed and distance must be used every time a pedestrian wants to cross a street with traffic because calculation of how much distance to allow approaching vehicles is necessary to comply with the “immediate hazard” requirement in ORS 814.040. A useful measure has been provided by law enforcement training materials used in “Pedestrian Safety Enforcement” actions which use decoy pedestrians to enforce the crosswalk laws. All assumptions are made in favor of the vehicle operator in order to snare only the worst offenders, such as by assuming vehicle speed is ten miles over the speed limit and assigning a long reaction time of 2 seconds, compared to the average of 1.6 seconds. Distances and speeds listed in the “Targeted Pedestrian Enforcement Operations Guidebook” (Oregon Department of Transportation, 2001) are as follows:

Posted Speed	Reaction and Stopping Distance	Stopping Length (Cars: 16', Buses: 40')	
20 mph	131 ft	8.2 cars 3.3 buses	
25 mph	161 ft	10.0 cars 4.0 buses	
30 mph	194 ft	12.1 cars 4.9 buses	
35 mph	228 ft	14.3 cars 5.6 buses	
40 mph	266 ft	16.6 cars 6.6 buses	
45 mph	306 ft	19.1 cars 7.7 buses	

Thus, at 25 mph the pedestrian should allow about ten car lengths (160 feet) or four bus lengths in distance to approaching traffic before stepping off the curb to cross. Drivers who fail to stop for pedestrians in crosswalks at these distances run the risk of a ticket. It would be a wonderful state of affairs if motorists were vigilant for “decoy” pedestrians who might turn out to be part of a law enforcement “action.” However, many motorists will not know about or follow the crosswalk law (hence the need for “Pedestrian Enforcement Actions”) so it is a difficult choice for the pedestrian — assert your legal rights and run the risk of getting hit, or take the time to wait for a sufficient gap in traffic, which may take several minutes. Braving the lane on foot in front of approaching traffic is a tough position to occupy, and a difficult technique to teach to any user group. While the pedestrian does have a legal right to occupy the lane and stop traffic in the occupied and adjacent lanes (up to three lanes per ORS 811.028) in a crosswalk, the consequence of motorist disregard or inattentiveness includes cars hurtling toward the pedestrian at speed.

The pedestrian dilemma is that it’s difficult to know when approaching motorists are beyond “so close as to constitute an immediate hazard” and are going to honor the pedestrian right of way. Following a slowing motorist’s wave motion to cross may be safe if there is mutual understanding. But interpreting eye contact is difficult at any distance. One good sign that a motorist is slowing or stopping is when the front of the car settles slightly, indicating that the driver has stopped accelerating or applied the brakes and the front suspension is compressing as the

vehicle's center of gravity shifts forward. However, there is no sure way to know when an approaching motorist is going to stop or whether the motorist is merely temporarily slowing for some other reason.

When approaching motorists stop, then overtaking vehicles in other lanes (including bicyclists) are legally required to follow the example and stop too. ORS 811.020 "Passing Vehicle Stopped At Crosswalk" prohibits overtaking and then passing a vehicle stopped for a pedestrian in a marked or unmarked crosswalk. Since "overtake" means "catch up with and pass while traveling in the same direction" (Oxford University Press Dictionary), the prohibition does not apply to motorists approaching from the other direction ("oncoming" traffic).

One way we can all participate in raising consciousness of pedestrian rights in crosswalks is to encourage local law enforcement agencies to launch frequent Pedestrian Enforcement Actions in school and work zones as well as neighborhoods and business districts. Safer crosswalks for pedestrians benefit everyone. The Willamette Pedestrian Coalition has materials and guidance available to use in your own area; contact the WPC to get help with your efforts to enlist law enforcement to make crosswalks more safe!

Beware of local rules

Some jurisdictions also have rules requiring all pedestrians to cross roadways only at crosswalks, which may create a legal trap for the unwary as few municipal ordinances are published widely or included in any visible signage. For example, in Portland pedestrians are prohibited from crossing the roadway within 150 feet of a crosswalk. These laws are sometimes used against pedestrians after an accident to shift comparative negligence as a matter of law (negligence per se) to a pedestrian injured while crossing a roadway within 150 feet of an available crosswalk. These and other laws for Oregon cities are contained in Section VI, *City Ordinances Related to Pedestrians*.

A word about "safety islands"

ORS 811.028(3)(a) states a driver need not stop "Upon a roadway with a safety island, if the driver is proceeding along the half of the roadway on the far side of the safety island from the pedestrian." So does a driver have to stop for a pedestrian on a safety island who has not yet stepped out into or next to the driver's lane of travel? If the pedestrian must step into the lane to trigger the right of way the same way the pedestrian must step off the curb on the corner of a regular intersection, then the "safety island" (which is supposed to improve safety) merely becomes a hiding place for pedestrians to escape from cars zooming by on the roadway.

Fortunately, the statute's language is pretty clear that the only time a driver is allowed to drive by is when the pedestrian is in the crosswalk on the other side (the "far side") of the safety island. This distinction is important because approaching traffic in the lane(s) where the pedestrian is heading must stop when the pedestrian first steps onto the safety island and then remain stopped until the pedestrian is either safely across the street or give the pedestrian a lane and 6 feet (if there is a signal present). Since most safety islands are placed on relatively high speed multi-lane streets, the pedestrians' right to have approaching drivers stop **BEFORE** stepping from the safety island into the street is a big benefit.

Conclusion

Current Oregon law provides the broadest protection in seventy years (since 1941) to pedestrians in crosswalks. While pedestrians outside of crosswalks must still yield the right of way to motorists, Oregon law has provided a flexible and workable definition of "crosswalk" and expanded the right of way of pedestrians in crosswalks to reform earlier restrictions. The lawful right of way now includes both sides of a two-lane road or the lane occupied by the pedestrian and six feet where the pedestrian is crossing with a traffic light.

Pedestrians And Sidewalks

Pedestrians rule on sidewalks

The law of sidewalks is easy to remember: pedestrians have the right of way and all vehicles must yield to them (including bicycles which are also vehicles). (ORS 811.025.) Bicyclists must provide an audible warning when passing pedestrians on the sidewalk (ORS 814.110(1)(b)) and vehicles must yield to pedestrians when crossing over a sidewalk or when a pedestrian is in a marked or unmarked crosswalk (ORS 811.028). All vehicles are also required by law to stop before crossing over a sidewalk from a driveway or parking garage (ORS 811.505) and to stop when overtaking other vehicles already stopped to allow a pedestrian to proceed in a crosswalk (ORS 811.020).

The statutory definition of a sidewalk is much broader than the traditional image of a paved walkway and presents good authority for expanding the area where pedestrians may claim the right of way. “Sidewalk”, as defined in the Oregon statutes, includes unpaved as well as paved areas. ORS 801.484 defines sidewalk as:

“Sidewalk” means the area determined as follows:

- (1) On the side of a highway which has a shoulder, a sidewalk is that portion of the highway between the outside lateral line of the shoulder and the adjacent property line capable of being used by a pedestrian.
- (2) On the side of a highway which has no shoulder, a sidewalk is that portion of the highway between the lateral line of the roadway and the adjacent property line capable of being used by a pedestrian. The statute defines “sidewalk” in a quite literal fashion: a place where someone can “walk” to the “side” of the road.

Use of the statutory definition of “sidewalk” to define the area of pedestrian right of way is useful because it adds considerable square footage to the area where pedestrians rule, and is far more pedestrian friendly than the “shoulder” which is really up for grabs to anyone who dares to venture there. The sidewalk starts where the “shoulder” ends, and the “shoulder” is the area at the edge of the roadway (defined in ORS

801.480 as the area “contiguous to” [next to] the roadway) for use by pedestrians and stopped vehicles or for emergency use. Since the shoulder does not provide a right of way to any user group and is therefore somewhat of a legal gray zone, from a pedestrian perspective, it is good for it to end so the “sidewalk” can begin.

While city notions of a paved sidewalk next to the roadway are the first image that usually comes to mind, the legal definition clearly includes unpaved walking paths alongside rural roads or the “highway” (defined in ORS 801.305 as “every public way... used or intended for use of the general public... as a matter of right”). The only requirement for the surface is that it be “capable of being used by a pedestrian”, which presumably includes everything from concrete to weeds and low brush or shallow water.

While the statute does not provide a clear description of where the shoulder ends and the sidewalk begins, it does state that one purpose of the “shoulder” is to provide a “lateral support of base and surface courses” which nicely describes the stuff (usually gravel or layers of old road material) under the edge of the pavement used to keep the road from collapsing under the weight of passing traffic. And where there is no “shoulder” next to the roadway edge then the sidewalk begins right at the edge of the pavement and stretches to the edge of the highway, which is usually where the private property line starts and the pedestrian is transformed from “Most Legitimate User” to a person walking (or trespassing) off the highway.

Be forewarned that there are more restrictive definitions of “sidewalk” in use by other authorities, but none carry the force of law of the Oregon statutory definition and its precise fit in the Oregon Vehicle Code terminology that places it within the “highway”, but next to the “shoulder,” or at the “roadway.” For example, the Oregon Bicycle and Pedestrian Plan defines “sidewalk” as “A walkway separated from the roadway with a curb, constructed of a durable hard and smooth surface, designed for preferential or exclusive use by pedestrians.” (Appendix A, p. 198 [1995]). However, this definition is intended to be useful primarily for facility design and construction, and is not intended to limit the area that legally qualifies as a “sidewalk” or the rights of pedestrians within that area.

Fighting to maintain an expansive view of “sidewalk” is necessary if pedestrians are going to preserve and expand their rights of passage. While the motor vehicle has pushed the pedestrian from the top of the heap on the roadway, the pedestrian still retains legal supremacy on the sidewalk.

Pedestrians And Roadway Shoulders

The shoulder free for all

Roadway shoulders are a legal “no man’s land”, or rather, “everyone’s land” because there is no right of way provided to vehicles or pedestrians by Oregon statutes or case law. The concepts of “due care” and “reasonable care” govern behavior.

ORS 801.480 defines “shoulder” as:

the portion of the highway, whether paved or unpaved, contiguous to the roadway that is primarily for use by pedestrians, the accommodation of stopped vehicles or emergency use and for lateral support of base and surface courses.

The shoulder begins at the edge of the roadway, but sometimes there is no shoulder, such as when a cliff or curb adjoin the roadway. The features at each location determine pedestrian rights on the shoulder, and rather complicated legal restrictions govern pedestrian rights to shoulder usage.

ORS 801.450 defines “roadway” as the “portion of the highway that is improved, designed or exclusively used for vehicular travel exclusive of the shoulder.”

Thus, where the “roadway” ends, the “shoulder” begins (where there is one) and where the “shoulder” ends, the “sidewalk” begins (if there is one). The “sidewalk” runs all the way to the adjacent property line, which usually means someone’s yard or parking lot in the city, or a fence or field/brush in rural areas.

Pedestrians on the shoulder do not have to yield to motor vehicles like they do on the roadway. And if there is a “usable” shoulder or sidewalk “adjacent” (near) the road, then ORS 814.070 requires that pedestrians use it or face a ticket. However, the word “usable” at least provides the pedestrian with the legal right not to use the shoulder if it is so difficult

to walk upon that it is unusable, such as where the shoulder is uneven or made out of a crumbly material that makes walking hazardous.

Shoulders are often used in rural areas by pedestrians and bicyclists. ODOT recommends a six foot paved shoulder to accommodate bicycle and pedestrian traffic separated from the roadway by a four inch wide white fog line. These rural shared roadways are called “rural bikeways.” Many rural highways are being widened to carry broader shoulders and thereby provide increased shoulder area for non-motorized users. They are a relatively inexpensive way to provide a shared roadway design.

Since pedestrians are not favored over motor vehicles on shoulders, there is the potential for serious injury when things go wrong on the roadway. ORS 801.480 states the shoulder is available for “emergency use” which can include a motor vehicle suddenly out of control.

The Oregon Vehicle Code contains rather technical requirements for where to walk on the shoulder. ORS 814.070 requires that pedestrians position themselves as far as practical from the roadway edge facing oncoming traffic (or on a divided highway, on the right side of the right shoulder):

ORS 814.070 Improper Position Upon or Improperly Proceeding Upon Highway

- (1) A pedestrian commits the offense of pedestrian with improper position upon or improperly proceeding along a highway if the pedestrian does any of the following:
 - (a) Takes a position upon or proceeds along and upon the roadway where there is an adjacent usable sidewalk or shoulder.
 - (b) Does not take a position upon or proceed along and upon the shoulder, as far as practicable from the roadway edge, on a highway that has an adjacent shoulder area on one or both sides.
 - (c) Except in the case of the divided highway, does not take a position upon or proceed along and upon the left shoulder and as far as practicable from the roadway edge on a two-way highway that has no sidewalk and that does have an adjacent shoulder area. This paragraph does not apply to:
 - (A) A hitchhiker who takes a position upon or proceeds along and upon the right shoulder so long as the hitchhiker does so facing the vehicles using the adjacent lane of the roadway; or
 - (B) A member of a group that has adopted that section of highway under the provisions of ORS 366.158 and who is obeying the rules of the Department of Transportation for picking up litter on either side of the roadway.
 - (d) Does not take a position upon or proceed along and upon the right highway shoulder, as far as practicable from the roadway edge, on a divided highway that has no sidewalk and does have a shoulder area.

This paragraph does not apply to a member of a group that has adopted that section of highway under the provisions of ORS 366.158 and who is obeying the rules of the Department of Transportation for picking up litter on either side of the roadway.

- (e) Fails to take a position upon or proceed along and upon a highway that has neither sidewalk nor shoulder available, as near as practicable to an outside edge of the roadway, and, if the roadway is a two-way roadway, only on the left side of it.

The pedestrian walking on the shoulder loses the right of way over vehicles that he or she enjoyed on the sidewalk. And if the pedestrian is not walking in the right place and gets hit, then the driver will be able to argue in court that the pedestrian violated the law. Of course any negligence or legal violation by the driver will also be taken into account in determining fault and a jury would then decide the percentages of fault.

Pedestrian Rights On Bicycle Lanes And Bikeways

A new outpost

The Oregon Vehicle Code does not mention pedestrian use of bicycle lanes. While it is possible to come up with some opinions of how things might work, no definitive statements are possible until the legislature or appellate courts make some clear declaration of rights and duties.

The Oregon Vehicle Code defines “bicycle lane” as “that part of the highway, adjacent to the roadway designated by official signs or marking for use by persons riding bicycles.” Oregon Administrative Rule (OAR) 734-20-055 specifies that bike lanes “shall be separated from the adjacent roadway by a single, solid eight-inch wide white stripe”. If a pedestrian uses a bicycle lane where there is a usable shoulder or sidewalk available, then it seems clear that the bicycle should have the right of way. Where there is no usable sidewalk or shoulder, then the pedestrian is probably safest along the outside edge of the bike lane, facing traffic and yielding the right of way to all vehicles (including bicycles of course).

Use conflicts arise when there is no good paved sidewalk and the bicycle lane presents walkers, runners and bladders with an attractive alternative. Because bicycle lanes are a relatively new roadway invention, design specifications and signage are uneven and there are sometimes bicycle lanes on only one side of a street (and bicyclists will sometimes ride facing traffic, to the consternation of many motorists). Oregon law does not specifically prohibit bicycle riding while facing traffic in a bicycle lane, but the Oregon Bicyclist Manual, published by the Oregon Department of Transportation (ODOT, 2006) states: “When riding in a bike lane, you are still required to ride in the same direction as the traffic next to you.” (p. 5) Unfortunately, sometimes roadway design, local custom or the lack of a safe place to cross a busy highway places riders in the position of deciding to ride facing traffic in bicycle lanes. ODOT has

attempted to change the law in the Oregon Legislature to include a specific statutory requirement to ride with traffic in bicycle lanes, but has so far not met with success.

In crowded urban areas directional conflicts arise because bicyclists are taught to ride with traffic in bicycle lanes and pedestrians usually feel safest proceeding facing traffic. Further, some bicyclists feel possessive about bicycle lanes and do not like to share the space with pedestrians.

The latest Design Standards from the Oregon Department of Transportation (ODOT), *The Oregon Bicycle and Pedestrian Plan, Section II Design (2007 Update) (Public Review Draft)* uses the term “Shoulder Bikeways” to describe a paved shoulder next to a rural roadway that is suitable for bicycle traffic. Paved roadway surfaces are being widened and a fog line painted inside the paved edge of the roadway to give bicyclists sufficient paved distance to the right of the fog line to have maneuvering space while riding on or adjacent to the painted stripe. In many cases, these rural-shoulder “bikeways” also provide the best surface for pedestrians who wish to walk along the highway. Often, shoulders on rural highways are not mowed or level enough to provide a safe and secure walking surface for pedestrians and the paved portion of the roadway is the best practical place to walk along the road.

Pedestrian Rights On The Roadway

On the edge

The law is clear that pedestrians must yield the right of way to vehicles upon roadways. ORS 814.040 provides:

ORS 814.040 Failure to Yield to Vehicle

- (1) A pedestrian commits the offense of pedestrian failure to yield to a vehicle if the pedestrian does any of the following:
 - (a) Suddenly leaves a curb or other place of safety and moves into the path of a vehicle that is so close as to constitute an immediate hazard.
 - (b) Fails to yield the right of way to a vehicle upon a roadway when the pedestrian is crossing the roadway at any point other than within a marked crosswalk or an unmarked crosswalk at an intersection.
 - (c) Except as otherwise provided under the vehicle code, fails to yield the right of way to all vehicles upon the roadway." There are exceptions for blind or deaf pedestrians, persons driving livestock across a highway and highway workers, but the general rule is that when pedestrians proceed along an Oregon highway, they must walk along either a usable "sidewalk" or, if on a "shoulder", as far as practicable from the roadway edge, facing oncoming (as opposed to overtaking) traffic. On a divided highway, pedestrians must walk on the "right highway shoulder as far as practicable from the roadway edge." ORS 814.070

If there is no usable sidewalk or shoulder available, then pedestrians must proceed as near as practicable to an outside edge of the roadway and, if the roadway is a two-way roadway, only on the left side of it (ORS 814.070(1)(e)). Thus, while bicyclists have a "right to the road" (so long as they ride as far to the right as practicable on a two-way street), pedestrians do not have a right to the road and must yield to vehicles except when in a crosswalk.

Every walker or runner on rural two lane roadways with a usable shoulder is arguably violating the requirement to use the shoulder, but when there is no other traffic it is hard to understand why it could

possibly make a difference. However, if there is other traffic and an injury then the choice not to stay on a usable shoulder may be a big legal problem. It is important to remember that the shoulder or sidewalk must be “usable” before the pedestrian must use it; if the way is blocked or debris or an uneven surface makes it difficult to use then the pedestrian is provided a legal right to use the roadway.

ORS 814.070(e) gives the pedestrian the right to lawfully travel on the roadway only where there is no usable sidewalk or shoulder. “Improper Position Upon or Improperly Proceeding Along Highway” subjects the pedestrian to a ticket if he or she “Fails to take a position along or proceed upon a highway that has neither sidewalk nor shoulder available, as near as practicable to an outside edge of the roadway, and, if the roadway is a two-way roadway, only on the left side of it.” While the statute describes what is allowed by prohibiting what is forbidden, it nevertheless grants the pedestrian the key to the highway in that it preserves the right to use part of the road when necessary so as to allow access and passage. But remember, the pedestrian lawfully on the roadway must still yield the right of way to any and all vehicles, including bicycles (ORS 814.040(1)(b)).

Part III: Pedestrian Legal Advocacy

Pedestrian Rights To Development Of Facilities: Getting Our Share

Background

Pedestrian legal rights in Oregon to development of pedestrian facilities were established in the 1971 Oregon Bicycle Bill. The Oregon Department of Transportation (ODOT) describes the evolution of this important legislation on its website as follows:

ORS 366.514, aka the bike bill, was passed by the Oregon Legislature in 1971. It requires the inclusion of facilities for pedestrians and bicyclists wherever a road, street or highway is built or rebuilt. It applies to ODOT, cities and counties. It also requires ODOT, cities and counties to spend reasonable amounts of their share of the state highway fund on facilities for pedestrians and bicyclists. These facilities must be located within the right-of-way of public roads, streets or highways open to motor vehicle traffic. The funds cannot be spent on trails in parks or other areas outside of a road, street or highway right-of-way.

Advocacy for expansion of pedestrian facilities is critical if a pedestrian movement is going to succeed in getting more people to walk. While many politicians and government staffers consider themselves to be pedestrian advocates, their leadership requires that they also represent the interests of motorized traffic. The manufacturing, product distribution, and agriculture industries all depend on efficient low cost transportation, and when fuel costs rise there is even more pressure to remove impediments that appear to place Oregon's economy at a competitive disadvantage. Steady development of non-motorized facilities requires pressure from pedestrian advocates outside of government. If pedestrian advocates do not step up and push for development of pedestrian

facilities then the only pressure applied to decision makers will be from groups like the trucking association, AAA, and other industry groups.

The 1% Rule and ODOT

Pressure is necessary even though many Oregon officials endorse pedestrian facility development. Highway dollars include pedestrian funding. Where will those dollars be spent? The ODOT website states: “The law requires that in any given fiscal year, the amounts expended to provide walkways and bikeways must be a minimum of 1% of the state highway fund received by the Department, a city or county.” While ORS 366.514 requires that at least 1% of state highway funds be spent on walk and bike facilities, the statute also contains broadly stated exceptions to application of the 1% requirement that stand in the way of adequate enforcement. Pedestrian advocates must recognize ODOT’s mix of interests and pressure it to implement the law *and* enforce it with other agencies. The ODOT website contains a useful juxtaposition of the statutory language with its interpretation of what ORS 366.514 requires:

ODOT Interpretation of ORS 366.514

The bill is divided into Sections (1)-(5). The original language of the bill is in bold, with ODOT’s interpretation following. The terminology of the original bill is outdated: “footpaths and bicycle trails” should read “walkways and bikeways.”

- (1) Out of the funds received by the department or by any county or city from the State Highway Fund reasonable amounts shall be expended as necessary to provide footpaths and bicycle trails, including curb cuts or ramps as part of the project.**

The law requires that reasonable amounts of State Highway Funds be expended by the Department of Transportation, counties and cities to provide walkways and bikeways. Reasonable amounts are related to the need for bikeways and walkways; if there is a need, the governing jurisdiction shall expend a reasonable amount to construct the needed facilities.

When the bill was introduced in 1971, most road projects were funded through the highway fund. While the law itself refers to the highway fund, several drafters of the original bill have indicated that the intent was not to limit this requirement to the highway fund only, but rather to make this fund available for the construction of walkways and bikeways, to benefit all users of the highway.

Footpaths and bicycle trails, including curb cuts or ramps as part of the project, shall be provided wherever a highway, road or street is being constructed, reconstructed or relocated.

The law requires the Department of Transportation, counties and cities to provide walkways and bikeways on all roadway construction, reconstruction or relocation projects. The funding source or amount are not the determining factors; what is important is that pedestrian and bicycle facilities be provided as part of road improvements.

“Construction, reconstruction and relocation” refers to all projects where a roadway is built or upgraded. Walkways and bikeways don’t necessarily have to be provided on projects such as signal or signing improvements, landscaping and other incidental work. Preservation overlays are also excluded if the only intent of the project is to preserve the riding surface in usable condition, without any widening or realignment. Projects where the entire depth of the roadway bed is replaced are usually considered reconstruction projects.

Funds received from the State Highway Fund may also be expended to maintain footpaths and trails and to provide footpaths and trails along other highways, roads and streets and in parks and recreation areas.

The law also allows highway funds to be used for maintenance and to provide walkways and bikeways independently of road construction. The Department, a city or a county may use its highway funds for projects whose primary purpose is to provide improvements for pedestrians and bicyclists.

The 1980 Constitutional Amendment (Article IX, section 3a) now prohibits the expenditure of highway funds in parks and recreation areas. A subsequent Oregon Supreme Court opinion, *Rogers v. Lane County*, supports continued use of highway funds to construct and maintain walkways and bikeways within the highway right-of-way, but allows such use only when they are within the highway right-of-way.

(2) Footpaths and trails are not required to be established under subsection (1) of this section:

- (a) Where the establishment of such paths and trails would be contrary to public safety;**
- (b) If the cost of establishing such paths and trails would be excessively disproportionate to the need or probable use: or**
- (c) Where sparsity of population, other available ways or other factors indicate an absence of any need for such paths and trails.**

The law provides for reasonable exemptions. The determination that one or more exemption is met should be well-documented. The decision should allow opportunities for public review and input by

interested parties. Exemptions (b) and (c) refer back to the need. The burden is on the governing jurisdiction to show the lack of need to provide facilities; the need is legislatively presumed but can be rebutted.

... contrary to public safety:

This exemption applies where the safety of any group of highway users would be jeopardized by the inclusion of walkways or bikeways. In most instances, the addition of walkways and bikeways improves safety, both for motorists and non-motorized users, but there may be instances where the inclusion of a walkway or bikeway decreases safety, for example, sidewalks on a limited access freeway would be considered unsafe.

... cost is excessively disproportionate to need or probable use:

This exemption applies if it can be shown that there is insufficient need or probable use to justify the cost. Probable use must extend to cover the anticipated life of the project, which can be twenty years or longer for roadway projects, fifty years or longer for bridge projects. It is not sufficient to claim that there is little or no current pedestrian or bicycle use. This is often due to the lack of appropriate facilities. The law does not provide guidelines for determining when costs are excessively disproportionate.

... sparsity of population... indicates an absence of any need:

This exemption most commonly applies to rural roads or highways where walkways and bikeways would get very little use.

... other available ways... indicate an absence of any need:

For this exemption to apply, it must be shown that the “other available ways” serve bicyclists and pedestrians as well as or better than would a facility provided on the road, street or highway in question. The “other available ways” must provide equal or greater access and mobility than the road, street or highway in question. An example sufficient to indicate other available ways would be providing sidewalks and bike lanes on a parallel or adjacent street rather than along a freeway. An example not sufficient would be choosing not to provide bike lanes and sidewalks on an arterial street and encouraging use of local side streets that do not include bicycle and pedestrian facilities nor offer the equivalent direct route or access as the arterial street.

... other factors... indicate an absence of any need:

This exemption allows consideration of other factors that are particular to a project. A common example is the acceptability of

cyclists sharing the roadway with automobiles on low volume, low traffic local streets. Again, the absence of any need must be found.

(3) The amount expended by the department or by a city or county as required or permitted by this section shall never in any one fiscal year be less than one percent of the total amount of the funds received from the highway fund. However:

(a) This subsection does not apply to a city in any year in which the one percent equals \$250 or less, or to a county in any year in which the one percent equals \$1500 or less.

(b) A city or county in lieu of expending the funds each year may credit the funds to a financial reserve or special fund in accordance with ORS 280.100, to be held for not more than 10 years, and to be expended for the purposes required or permitted by this section.

(c) For purposes of computing amounts expended during a fiscal year under this subsection, the department, a city or county may record the money as expended:

(A) On the date actual construction of the facility is commenced if the facility is constructed by the city, county or department itself; or

(B) On the date a contract for the construction of the facilities is entered with a private contractor or with any other governmental body.

The law requires that in any given fiscal year, the amounts expended to provide walkways and bikeways must be a minimum of 1% of the state highway fund received by the Department, a city or county. The law does not establish a special fund (“bicycle fund”), nor does it limit the expenditures to 1%: section (1) requires that “reasonable amounts” be expended. 1% is only a minimum.

Cities and counties are not required to spend a minimum of 1% each year; they may credit this amount to a reserve fund and expend these amounts within a period not to exceed ten years.

The 1% minimum requirement is independent from the requirement to provide bikeways and walkways as part of road construction. A jurisdiction spending more than 1% of its funds on walkways and bikeways must still provide bikeways and walkways as part of all new construction projects, unless determined not to be otherwise required pursuant to section (2).

The 1% minimum requirement does not apply to cities receiving less than \$25,000 a year, or to counties receiving less than \$150,000 a year from the fund. However, bikeways and walkways must be provided wherever roads are constructed, as required in Section 1, subject to the exemptions in Section 2.

(4) For the purposes of this chapter, the establishment of paths, trails and curb cuts or ramps and the expenditure of funds as authorized by this section are for highway, road and street purposes.

This section is the legislature's statement of intent that these uses would qualify under the Constitution as highway uses. This is reinforced in the 1980 constitutional amendment (Article IX, section 3a) and by *Rogers v. Lane County*.

The department shall, when requested, provide technical assistance and advice to cities and counties in carrying out the purpose of this section. The division shall recommend construction standards for footpaths and bicycle trails. Curb cuts or ramps shall comply with the requirements of ORS 447.310. The division shall, in the manner prescribed for marking highways under ORS 810.200, provide a uniform system of signing footpaths and bicycle trails which shall apply to paths and trails under the jurisdiction of the department and cities and counties.

One of the purposes of this Bicycle/Pedestrian Plan is to implement this section. ODOT develops standards and designs for bikeways and walkways. ODOT staff is available to assist cities and counties with technical problems, as well as with planning and policy issues.

The department and cities and counties may restrict the use of footpaths and bicycle trails under their respective jurisdictions to pedestrians and non-motorized vehicles.

Motor vehicles are generally excluded from using bike lanes, sidewalks and multi-use paths.

(5) As used in this section, "bicycle trail" means a publicly owned and maintained lane or way designated and signed for use as a bicycle route.

A "bicycle trail" is currently defined as a "bikeway."

The Oregon Court of Appeals upheld the intent of this statute in *Bicycle Transportation Alliance v. City of Portland* (9309-05777; CA A82770). The judge's summary was: "Read as a whole, ORS 366.514 requires that when an agency receives state highway funds and constructs, reconstructs or relocates highways, roads or streets, it must expend a reasonable amount of those funds, as necessary, on bicycle and pedestrian facilities. The statute also requires the agency to spend no less than one percent per fiscal year on such facilities, unless relieved of that obligation by one of the exceptions in subsection (2)."

Note that the ODOT website ends its interpretation with the 1993 Bicycle Transportation Alliance lawsuit against the City of Portland which successfully argued that the language of ORS 366.514 clearly required a 1% minimum expenditure of funds. However the exceptions to application of the 1% rule contained in Section 2 ("*costs excessively*

disproportionate to the need or probable use”) actually swallow the rule if some reasonable basis can be demonstrated by local officials who oppose a proposed pedestrian plan.

What can be done?

While citation of the BTA lawsuit and the threat to file a lawsuit in court to enforce ORS 366.514 is often helpful in persuading reluctant officials to more fully include non-motorized users in a project, experience has shown in the fifteen years since the case was filed that active pressure on officials by a broad coalition of citizens is far more effective than a court case alone. Removing the loopholes in ORS 366.514(2), expanding the description of the types of funds and projects within its reach, and increasing the minimum percentage above one percent have all been discussed for future legislative reform but have so far not gotten beyond the talking stage. Any effort to expand ORS 366.514 will require considerable effort and coordination between user groups and government leaders to have a realistic chance at passage into law.

No ID Required

You have a right not to carry ID or identify yourself

While motor vehicle operators are required by statute to carry their operator's license or permit on their person, pedestrians are exempt from this legal requirement.

No ID required for pedestrians

Intrusion by government upon the right to walk where we wish without being monitored by "Big Brother" or the forces of Homeland Security is an individual freedom, at least so long as citizens follow the traffic laws and municipal or county ordinances. Contact with law enforcement officers sometimes creates a conflict because police are accustomed to working with the legal requirements for drivers, i.e., production by the citizen upon request of driver's license identification.

Since no requirement for carrying identification exists for pedestrians, it has been frustrating for police officers trying to issue citations to protesters or traffic law offenders.

The right to be unidentified

State legislatures and appellate courts have been uneven in their protection of individual liberties under the Fourth Amendment prohibition against unreasonable search and seizure when there is less than probable cause to justify an arrest. If a law enforcement officer has probable cause to arrest an individual for a crime, then the arrest process justifies inquiry about identity and reasonable detention, if the arrested person is unwilling to cooperate. However, if the citizen is not being arrested for a crime, then the law regarding stop and detention becomes applicable and creates an increased level of constitutional protection for the citizen.

If a law enforcement officer has a reasonable suspicion that a person has committed or is about to commit a crime, ("about to commit" is defined in ORS 131.605 somewhat loosely as: "unusual conduct" indicating "criminal activity may be afoot") then the citizen may be stopped

(detained) and an inquiry may be conducted about the suspicious circumstances, which does not include the obligation to identify oneself to the officer in Oregon.

Recent developments leave current Oregon law intact

While present Oregon law does not require that a person stopped by a suspicious police officer must carry or present identification, the U.S. Supreme Court decided five-to-four in 2004 that the state of Nevada was within its authority in convicting Larry Hiibel for violation of a Nevada statute requiring people stopped in suspicious circumstances to identify themselves. So far, Oregon does not have a similar statute on the books.

However, law enforcement frustration with citizen refusals to identify led to introduction of House Bill 2390 in the Oregon 2005 Legislature. The measure would have created an offense of "Refusal to Identify." The measure passed the Oregon House (by a margin of 39/20) but died in the House Rules Committee before it was ever sent over to the Senate (which would likely not have passed it for civil liberties reasons). HB 2390 would have required that a person present at the scene of a felony or to whom a police officer intends to issue a citation, identify himself or herself when asked; if the person failed to comply, the law would have allowed immediate arrest and detention. This measure was an outgrowth of frequent difficulty experienced by police officers attempting to obtain cooperation from witnesses to crimes or in issuing non-criminal citations to persons in non-motorized vehicle citation situations such as protests, Critical Mass, or other instances where no hunting/fishing or other registration must be carried by the citizen.

Periodically, this area will continue to be a source of debate between the law enforcement and civil liberties communities. Ultimately, the question will be decided in a political forum and will depend on the political constituencies in the legislature and in the courts.

For now, citizens do not need to carry identification. And pedestrians need not identify themselves unless charged with a traffic citation or crime. If cited or charged with a crime, pedestrians must correctly identify themselves for purposes of service of the Uniform Traffic Citation or face arrest for a Class A Misdemeanor for giving False Information to a Peace Officer. ORS 162.385. Thus, while no identification papers must be carried by a person, it is, nevertheless, a misdemeanor crime to fail to correctly identify oneself when being cited.

While protection of the individual's right not to carry identification and to refuse to identify oneself in the absence of having committed an offense is a narrow one, it is, nevertheless, a significant protection for the

individual. Travelers to other countries who have ever encountered an identity-check station will recognize the difference immediately. “Flying below the radar” or “being off the grid” may seem at first glance like vestigial stumbling blocks for law enforcement in this age of Homeland Security and plastic disposable identity cards, but our right to remain unidentified so long as we behave ourselves is a basic building block of our individual freedom in the United States and is worth preserving.

The “Bad” Pedestrian – Jaywalking And The Law

“Jaywalk” is not a term that is defined in the Oregon Vehicle Code but is certainly a part of our “legal” vocabulary. To “jaywalk” is to be a “bad” pedestrian by engaging in some sort of illegal or unwise behavior while on foot. Professor Peter Norton from the University of Virginia has studied the roots of the term and how it became a tool in the culture conflict between the pedestrian culture and the promoters of the motor vehicle shortly after the turn of the last century.

In 1909 “jaywalker” was a colloquial midwestern term describing a country person who came into the city and got in the way of other pedestrians on the busy streets while gawking at all the sights. But promoters of the new automobile industry took the term over to strengthen the automobile’s claim to street space. They transformed “jaywalker” to describe someone in the street who was not paying attention to approaching motorists. However, before this campaign it was the pedestrian who had the right of way against the “joyriders” in automobiles; collisions were viewed as the result of motorists not paying attention to the lawful presence in the street of regular folks. But in 1908, Henry Ford began mass producing the Model T so it became readily available (over the next 19 years, over 15.5 million were sold). As the number of cars increased, the pedestrian’s right to be in the street was challenged and a transformation began that included a methodical and effective national campaign to push the pedestrian to the side of the road.

Professor Norton says that the campaign to take over the roads included new legal prohibitions on pedestrian street access, traffic signals to allow motorized right of way, and a sophisticated campaign to subordinate pedestrian rights in the name of progress and public safety. The conflict between motorists and pedestrians changed the nature of city streets from cultural thoroughfares teaming with all sorts of wagons, vendors, bicyclists, animals and carts to routes where motor vehicles transformed

and pushed the roadway clear of other users by sheer brute force. Norton notes that by 1930 “jaywalker” was a common term used in the “safety” campaign sponsored by automobile interests. People were hired to wear dunce or clown costumes while carrying “jaywalker” signs and the Boy Scouts of America were encouraged to volunteer to spread the word not to jaywalk in the name of public safety and order.

Norton estimated that well over 150,000 pedestrians were killed in traffic accidents from 1920 to 1929, a four-fold increase over the previous decade. “Of all the many rivalries between various street users, the feud between pedestrians and motorists was the most relentless — and the bloodiest.” He points out that the battle continues in modern efforts to reclaim pedestrian rights to the streets, from policy questions over length of the wait time before a “walk” signal to traffic calming efforts that restrict motorized access.

Remove the reasons people jaywalk and they won’t do it

Poorly designed pedestrian facilities that impede walking travel, overly restrictive laws that don’t make sense, and lack of safe crossings all contribute to perpetuate use of “jaywalking” as a label for “bad” pedestrian behavior. The Oregon Bicycle and Pedestrian Plan states “‘Jay-walking’ is not a legally defined term in Oregon law. It does not mean crossing a street midblock” (Chapter 5, Street Crossings, p. 2 (2007 Public Review Draft)). Pushing back at attempts to prohibit pedestrian access is an important part of pedestrian advocacy. If leaders want to make locations safer for pedestrians the answer is not to prohibit lawful entry, but instead to create conditions or facilities that entice pedestrians to use the safer alternative because it works better. The Oregon Bicycle and Pedestrian Plan recognizes as much when it states that

Midblock crossings are a fact that planners and designers need to consider: people will take the shortest route to their destination. Prohibiting such movements is counter-productive if pedestrians continue to cross the road with no protection. It is better to design roadways that enable pedestrians to cross safely.

Chapter 5 Street Crossings, p.1 (2007 Public Review Draft)

The term “jaywalk” takes on a whole new meaning when its history is examined. What people think of as a slang name for a collection of bad pedestrian behaviors is actually a label imposed upon pedestrians for the good of motor vehicles. While it would be foolish to advocate jaywalking as a step in the right direction, recognizing and pushing back upon societal forces that continually push to keep pedestrians “in their place” is an important first step in creating modern pedestrian group consciousness.

Vulnerable Roadway User: A New Remedy Against Careless Drivers

The 2007 Oregon Legislature passed HB 3314, creating an enhanced penalty for careless driving if it contributes to serious physical injury or death to a “vulnerable user of a public way”, and will go into effect January 1, 2008. The purpose of this article is to discuss the Vulnerable User legal concept and its potential for improvement in safety for non-motorized roadway users such as bicyclists and pedestrians.

“Vulnerable Roadway User”: a European safety concept

The concept of “vulnerable roadway user” has been used by planners and safety organizations in Europe to categorize and describe non-motorized roadway users. The label is a nice one because it incorporates the inherent vulnerability of humans who use the roads without being encased in a protective steel shell. Inclusion of the concept of vulnerability evokes a more sympathetic image and focuses on the shared vulnerability of these different user groups. Including vulnerable users within a single term emphasizes the requirement for protection to counterbalance the somewhat natural reaction some people have to improve safety by restricting access, such as by restricting bicycle access to freeways, pedestrian crossings or road access.

No state has ever used the Vulnerable Roadway User concept as a legal term, but for the reasons stated above, the members of the Bicycle Transportation Alliance (BTA) Legislative Committee felt it could focus the need for enhanced protection of vulnerable user groups (who are reducing energy consumption and pollution, while improving their own good health and fitness). Since people need to get out of their cars and walk or roll under their own power, some enhanced protection is necessary to get law enforcement and the court system participating in protecting and encouraging kids to walk to school, commuters to ride a

bike, and the use of a skateboard or scooter, instead of getting a ride or driving a car to run an errand.

It was our view that Oregon law was far too lenient in punishing careless drivers who receive merely a fine and are not even required to make a court appearance after a horrific collision. Some police officers and medical personnel have even been heard to argue that people who choose not to ride in a car should expect to have bad things happen because the roadways are so dangerous. To us, tolerating the status quo was not acceptable — it was time to change the law and create a zone of protection instead of indifference toward those people brave enough to use their bodies to get around.

Political realities and difficulties

When we first introduced the idea of an enhanced penalty for careless drivers who hurt vulnerable users, key legislators told us that any effort to create new crimes and inmates for our already overburdened state court and corrections system would face widespread resistance. Further, our effort to include motorcyclists within the definition of Vulnerable Roadway User was criticized and motorcyclists were excluded, even though the American Motorcyclist Association (AMA) “Motorcyclists Matter” campaign was a pioneer in the enhanced penalty area. On the other hand, we were pleased to include highway workers and rural folks moving equipment or astride animals within the definition. See HB 3314 (after this article).

It was extremely difficult to create an enhanced penalty when further criminal consequences were not an option, but BTA legislative committee member Doug Parrow began thinking outside the usual legal box and completely rewrote our original language to include a non-criminal alternative of a \$12,500 fine (up from \$750) and a one-year license suspension (no license suspension was previously included in a conviction for Careless Driving). Additionally, to create an inducement for careless drivers to improve their driving skill and pay the community back for their actions, a traffic safety course requirement and 100-200 hours of community service were included as an alternative to the fine and suspension — if the program is successfully completed, then the suspension and fine would be suspended.

While some in the bicycle community saw the penalties as insufficient, we felt it was a great improvement on the status quo. We also added a requirement requested by victim families that careless drivers be required to make a court appearance in front of a judge to face the charges instead of merely sending a check in the mail. Preliminary

reviews of our non-criminal alternative by law enforcement personnel were somewhat favorable because it provided an additional charging option. Police officers and prosecutors told us they were sometimes frustrated in serious accident cases because Oregon did not have a vehicular homicide law and its criminally negligent homicide law requires a gross deviation from the standard of care, which is close to a recklessness requirement. The Vulnerable User law provided a way to create real consequences for careless or negligent drivers without sending them to jail.

We quickly learned after legislative hearings on our bill that the testimony of families and victims was critical in creating legislative support. We also discovered that creating a new legal concept within the existing statutory structure required amending a considerable number of other statutes (see the attached statutory inset for the amendments to other statutes). The responsibility for administering the program, monitoring careless drivers and supervising community service and any fines or license suspensions also had to be assigned to various agencies. Agency legislative staffers were wary that their departments would be required to take on additional work without receiving any additional staff to perform it. However, our forward-looking attempt to solve the careless driver problem for kids trying to get to school and folks trying to work on the state's highways contributed substantially to rounding up agency representatives willing to help us figure out how to operate the program without costing the state a lot of money. Because we were doing something that had never been done before, the committee staff and the Legislative Counsel's office were required to draft and study multiple amendments, so that by the time the Bill wound its way through the legislature it had been amended at least eleven different times, a record in our experience.

HB 3314 has been in effect since January 1, 2008. We will see how effective it is in creating real consequences for bad-driver collisions. We hope that law enforcement will respond to our law by increasing their protective attitude toward kids trying to walk to school and folks trying to ride a bike instead of driving. Before the Vulnerable Roadway User law was passed, Oregon law provided only minor consequences for careless driving that really hurt someone. After our law passed the Legislature, a well-known local bicyclist was killed by a driver with a suspended license, and some folks in the bicycle community felt that we had not gone far enough in protecting the state's riders.

We felt, however, that given the constraints of the political process, we had made a good first step by incorporating a European safety concept into the American legal system, with an enhanced penalty mandating

either community service and driver-improvement education, or a substantial fine and a mandatory one-year license suspension. While the Vulnerable User law will likely be challenged in court, we hope it is a good first step toward creating greater consequences for drivers who fail to give Vulnerable Roadway Users their right to use the road.

Oregon needs a vehicular homicide law

Collisions that cause serious injuries or death are often caused by underinsured or uninsured drivers who will never be forced to pay full compensation for damages to the persons they hurt. Oregon's minimum automobile liability insurance amount of \$25,000 creates about enough insurance for a two day hospital stay; this amount is completely inadequate for most serious injuries. One problem is that law enforcement officers and prosecutors have few options under the Oregon Criminal Statutes to charge negligent driving that results in serious injuries or death. The Oregon law on the books that creates a crime for criminally negligent driving applies only when it causes a death and the driver:

Fails to be aware of a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such a nature and degree that the failure to be aware of it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

ORS 161.085(10) [definition of criminal negligence]

This crime of "Criminally Negligent Homicide" (located at ORS 163.145) is a Class B felony with a maximum sentence of 10 years and a maximum fine of \$250,000. The statutory requirement for "a gross deviation of the standard of care that a reasonable person would observe in the situation" is sometimes called "Gross Negligence" and is significantly harder to prove than "regular negligence". The additional requirement of a "gross deviation" creates a difficult burden for a prosecuting attorney before a jury in most death cases because they usually involve merely thoughtless driving behavior such as drifting over the fog line, failing to yield right of way, turning left into the path of a pedestrian, or being momentarily distracted by a barking dog or cell phone conversation, or failing to properly gauge the distance between the motor vehicle and a pedestrian. If prosecutors do not feel that can sustain criminal convictions then there is little chance that the prosecution will be initiated. Because the present standard requires a level of poor driving substantially above "mere negligence," the few prosecutions that do occur usually include some sort of gross deviation from the standard of care like continuing to drive when one realizes they are falling asleep at the wheel, running a stop sign, engaging in high risk traffic maneuvers, or driving in an aggressive manner.

There is also an unfortunate view among some law enforcement officers that because pedestrians place themselves in harm's way by insisting on walking or riding on roadways, it is foreseeable that there will be occasional catastrophic injuries and fatalities. This "injury goes with the territory" attitude is paternalistic and anathema to pedestrians' and bicyclists' basic legal rights to a fair share of the roadway. Several high visibility accident and death cases in Oregon in the last several years in which the driver was merely cited for Careless Driving or a Failure to Yield have created the need to reform the law.

Oregon needs a new law creating enhanced penalties besides the Vulnerable User law when bad driving causes serious bodily injury or death to a pedestrian or bicyclist due to ordinary negligence. Prosecutors would be more likely to charge this crime if it was easier to prove and less serious than the present crime of Criminally Negligent Homicide.

Now is the time to create stronger laws to protect vulnerable users

As America has awakened to the need to encourage alternative forms of transportation to the gas guzzling automobile and improvements in the physical health and well-being of citizens through walking and riding, encouraging the use of roadways by non-motorized users is at an unprecedented level. Neighborhood traffic calming efforts, Safe Routes to School Programs, designation of agricultural use areas, and design of pedestrian and bicycle friendly roadways and intersections, are all intended to encourage and protect vulnerable roadway users. This evolution in American thinking about shared use of the roadway creates the opportunity for the Legislature to enact a visible policy statement of protection for these user groups.

New legislative protections being discussed include creating a new Vehicular Homicide Law or adding particularly dangerous driving practices to existing law. One idea is to target careless driving that causes the death of a Vulnerable Roadway User by a driver without insurance, a drivers license, or while using a cell phone. A legislative amendment of the present Criminally Negligent Homicide law could add these high risk acts to the scope of the crime.

Another option is to introduce a new "Vehicular Homicide" crime to prosecute motorists who continue to drive even with a suspended license, as the Vulnerable User alternatives do little to deter someone who has no driver's license and no money to pay the fine. One underlying problem for American safety activists is that over the last 40 years citizens have been encouraged by media and the government to believe that driving a

car is a right instead of a privilege — serious collisions caused by suspended or unlicensed drivers are all unacceptable and should lead to additional criminal consequences in order to keep these dangerous drivers off the streets.

Text of House Bill 3314

Signed by Oregon Governor 8/2007, Effective 1/01/2008

SUMMARY

Increases penalty for offense of careless driving if commission of offense contributed to serious physical injury or death of vulnerable user of public way. Requires person committing offense to complete traffic safety course and perform 100 to 200 hours of community service related to driver improvement. Directs court to impose, but suspend on condition that person complete safety course and community service requirements, fine of up to \$12,500, suspend person’s driving privileges and set hearing date up to one year from date of sentencing to determine person’s compliance with requirements. Requires police officer issuing citation for offense of careless driving to note on citation if cited offense contributed to serious physical injury or death of vulnerable user of public way. Requires defendant who has been issued citation to make first appearance by personally appearing in court at time indicated in summons.

A BILL FOR AN ACT

Relating to vehicular contact with vulnerable user of a public way; creating new provisions; and amending ORS 41.905, 153.061, 153.090, 153.099, 809.280 and 811.135.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2007 Act is added to and made a part of the Oregon Vehicle Code.

SECTION 2. “Vulnerable user of a public way” means a pedestrian, a highway worker, a person riding an animal or a person operating any of the following on a public way, crosswalk or shoulder of the highway:

- (1) A farm tractor or implement of husbandry without an enclosed shell;
- (2) A skateboard;
- (3) Roller skates;
- (4) In-line skates;
- (5) A scooter; or
- (6) A bicycle.

SECTION 3. ORS 811.135 is amended to read:
811.135.

- (1) A person commits the offense of careless driving if the person drives any vehicle upon a highway or other premises described in this section in a manner that endangers or would be likely to endanger any person or property.

- (2) The offense described in this section, careless driving, applies on any premises open to the public and is a Class B traffic violation unless commission of the offense contributes to an accident. If commission of the offense contributes to an accident, the offense is a Class A traffic violation.
- (3) In addition to any other penalty imposed for an offense committed under this section, if the court determines that the commission of the offense described in this section contributed to the serious physical injury or death of a vulnerable user of a public way, the court shall:
 - (a) Impose a sentence that requires the person to:
 - (A) Complete a traffic safety course; and
 - (B) Perform between 100 and 200 hours of community service, notwithstanding ORS 137.129. The community service must include activities related to driver improvement and providing public education on traffic safety;
 - (b) Impose, but suspend on the condition that the person complete the requirements of paragraph (a) of this subsection:
 - (A) A fine of up to \$12,500, notwithstanding ORS 153.018; and
 - (B) A suspension of driving privileges as provided in ORS 809.280; and
 - (c) Set a hearing date up to one year from the date of sentencing.
- (4) At the hearing described in subsection (3)(c) of this section, the court shall:
 - (a) If the person has successfully completed the requirements described in subsection (3)(a) of this section, dismiss the penalties imposed under subsection (3)(b) of this section; or
 - (b) If the person has not successfully completed the requirements described in subsection (3)(a) of this section:
 - (A) Grant the person an extension based on good cause shown; or
 - (B) Impose the penalties under subsection (3)(b) of this section.
- (5) When a court imposes a suspension under subsection (4) of this section, the court shall prepare and send to the Department of Transportation an order of suspension of driving privileges of the person. Upon receipt of an order under this subsection, the department shall take action as directed under ORS 809.280.
- (6) The police officer issuing the citation for an offense under this section shall note on the citation if the cited offense contributed to the serious physical injury or death of a vulnerable user of a public way.

SECTION 4. ORS 809.280 is amended to read:

...

- (13) When a court orders suspension of driving privileges under ORS 811.135, the department shall immediately suspend all driving privileges of the person for one year.

SECTION 5. ORS 153.061 is amended to read: 153.061.

- (1) Except as provided in subsection (2) of this section, a defendant who has been issued a violation citation must either:
 - (a) Make a first appearance by personally appearing in court at the time indicated in the summons; or
 - (b) Make a first appearance in the manner provided in subsection (3) of this section before the time indicated in the summons.
- (2) If a defendant has been issued a violation citation for careless driving under ORS 811.135 on which a police officer noted that a vulnerable user of a public way suffered serious physical injury or death, the defendant must make a first appearance by personally appearing in court at the time indicated in the summons.

Bicyclists Must Mix With Pedestrians On Sidewalks

The law is clear

The law is clear that pedestrians have the right of way on sidewalks and that bicyclists must provide an audible signal when they pass persons on foot. To obtain the same right-of-way over motorized vehicles as pedestrians, bicyclists are limited by the traffic code to “no greater than a walking speed” when passing in front of driveways or entry ways and on crosswalks. Pedestrians, of course, also have the right-of-way over any motorized vehicle in marked or unmarked cross walks and on sidewalks. One problem area is that bicyclists on the roadway sometimes fail to yield to pedestrians attempting to cross roadways in marked and unmarked crosswalks. ORS 811.020 prohibits passing a vehicle stopped at a crosswalk for a pedestrian, but bicyclists frequently disregard this provision (to the consternation of some pedestrians). Further, bicyclists sometimes act as if they believe they are on a higher moral plane than other vehicles and therefore do not really have to stop for pedestrians. Other riders demonstrate their trick riding skills by weaving around clusters of alarmed pedestrians. The Oregon Traffic Code prohibits such behavior. ORS 814.410, “Unsafe Operation of Bicycle On Sidewalk,” is violated if a person “operates a bicycle on a sidewalk in a careless manner that endangers or would be likely to endanger any person or property,” creating an offense with similar operational language to the better known “Careless Driving Offense”.

Conflict on crowded sidewalks

One problem is that bicyclists travel so much faster than pedestrians and require considerably greater distance to turn and stop. When bicycle traffic is constricted, such as on bridges and other multi-use paths, the inevitable congestion magnifies the impact of the small steering or control mistakes that lead to occasional collisions.

The tension between bicyclists and other sidewalk users has led to bitter complaints by many pedestrians about unsafe and “rough” (to use a NASCAR term) riding practices. For some riders the idea of swooping down the crowded sidewalk at high speed creates the same joy as we see on the face of a dog galloping through a flock of terrified birds. Pedestrians do not appreciate the fun.

Bicycle advocates resist further restriction on the freedom to ride on sidewalks, and for many bicyclists, including children, the sidewalk is the only place they feel safe. Bicycle advocates argue that if adequate alternative facilities are developed then riders will choose not to ride where they are forced to share the way with slower moving pedestrians, and that restricting legal access to a path or sidewalk is never a good solution.

The Oregon Department of Transportation (ODOT) “Oregon Bicycle and Pedestrian Plan” urges that separate facilities be provided for the two groups:

“Many early bikeway designs assumed that bicyclists resemble pedestrians in their behavior. This led to undesirable situations: bicyclists are under-served by inadequate facilities, pedestrians resent bicyclists in their space, and motorists are confused by bicyclists entering and leaving the traffic stream in unpredictable ways. Only under special circumstances should bicyclists and pedestrians share the same space, e.g. on shared-use paths.”

(Oregon Bicycle and Pedestrian Plan, Introduction, p. 3 [Draft version] 2007).

Historically, many villages and cities have identified their highest areas of pedestrian density and declared them off limits to bicycles. In Portland, the area within SW Jefferson Street, Naito Parkway, NW Hoyt Street and 13th Avenue are off limits to bicycles except in the Park Blocks and on SW Salmon Street, on bridges and multi-use paths. However, the maximum fine of \$500, the fact that there are no warning signs defining the boundaries of prohibited areas, and almost universal ignorance and disregard of the law, create an uncertain environment for everyone that guarantees selective and uneven enforcement.

While New York City prohibits sidewalk bicyclists over 14 years of age, a new law includes a pedestrian-endangerment provision backed by a \$300 fine or 20 days in jail and bike impoundment. Physical contact with a pedestrian results in a \$600.00 fine or 20 days imprisonment and bike impoundment. While protecting pedestrians from injuries is a laudable goal, in an average year in a huge metropolitan area like New York City, bicycles kill no pedestrians and injure fewer than 200. In the same average year motor vehicles kill 200 pedestrians and injure 11,000. Clearly, the safety hazard associated with bicyclists on sidewalks is more

of an annoyance than a high-level, life threatening risk, at least when compared to motor-vehicle/pedestrian hazards.

Additional resources

The websites for Oregon Cycling (www.oregoncycling.org) and Swanson, Thomas & Coon (www.stc-law.com) each contain links to the book *Pedal Power – Part Three* collects city ordinances regulating bicycle operation on sidewalks in about 20 Oregon cities.

Conclusion

When bicyclists follow the rules, sidewalk bicycle riding can be safe. However, bicyclists sometimes save their worst behavior for the sidewalks and ignore sidewalk riding prohibitions. If bicyclists yield to pedestrians and give an audible signal when passing, the whole mix goes a lot more smoothly and the sidewalk provides an important artery for non-motorized travel.

Skateboards And Rollerblades Same Legal Status As Bikes In Portland

Background

In third world countries, roadways are frequently a vital artery, a link filled with people on foot, weighted down by loads, pushing wagons and carts, and generally sharing the roadway with all manner of motorized vehicles including tractors (sometimes pulling loaded wagons), motorcycles, trucks, and buses. Such conditions lead to mutual tolerance by motorized and non-motorized users, created by the necessity of sharing the few existing roadways.

It is ironic that when countries “prosper,” adding more and more motorized vehicles to the roadways, drivers tend to exhibit less tolerance for their non-motorized brethren. Perhaps the ultimate irony unfolds in first world countries, when cultural leaders realize the great cost imposed upon the environment and the deterioration of physical vitality caused by dependence upon motorized transportation.

As a historic matter, tiny pockets of resistance to motorized dominance of the roadway survived in the US through the ‘50s & ‘60s, represented in large part by bicycle racers, club riders, walking groups, forward thinking urban planners, equestrian groups, runners/joggers, and other “contrarians.” The relative prosperity of the last decades of the twentieth century (‘70s-’90s), and revelations from medical science about exercise, life style, and longevity combined to place focus on human powered alternatives to motor vehicle transportation, particularly in urban areas across the US.

As with most things, change has not been uniform or consistent. While on the one hand more adults commute to work than ever before, fewer elementary school kids ride their bikes to school than in the ‘50s and ‘60s

and current technology allows development of high performance low-cost roller blades and scooters, but some cities make it illegal to use the devices on urban core sidewalks out of fear of collisions with pedestrians. Unfortunately, urban policy makers face conflicting pressures, often resulting in increased restriction and regulation of new transportation forms. A recent example of the dialectical effect of attempts to provide for human power is found in Portland's recent experiments.

The Portland, Oregon experience

In 1999 *Bicycling* magazine named Portland, Oregon the most bike friendly city in the US. In 2008 the League of American Bicyclists (LAB) awarded Portland a Platinum designation for its historic efforts and positive bicycle culture. City officials and bicycle advocates have collaborated to create the nation's most advanced systems of bike lanes and pedestrian facilities. Aggressively pursuing "traffic calming" techniques, city traffic engineers utilized landscaped islands, speed bumps, pedestrian overpasses, and a pedestrian/bicycle consciousness raising campaign that had attracted world-wide attention.

However, the other side of the coin was revealed by the city's shabby treatment of other non-motorized roadway users. Buried within the Portland City Code was a provision which prohibited skaters (roller skaters or in-line bladers), and scooter riders from riding upon any streets or sidewalks in the downtown core of the city. The same law also prohibited skaters, bladers, boarders, and scooter riders from using any street within the city between sunset and sunrise, a virtual dusk to dawn martial law.¹

A legal no-man's land

In the absence of regulation by city ordinances or county codes, the Oregon Vehicle Code takes little notice of boarders, skaters, bladers, and scooters. Under the law these modes of transportation exist in a legal no-man's land, exempted from the provisions of the Oregon Vehicle Code: "Devices that are powered exclusively by human power are not subject to those provisions of the vehicle code that relate to vehicles. Notwithstanding this subsection, bicycles are generally subject to the vehicle code..." (ORS 801.026(6)).

¹116.70.410 Roller Skates and Skateboards.

- (A) No person may use roller skates, including in-line skates, a skateboard, or other similar device upon any street (roadway and/or sidewalk) within the area bounded by and including SW Jefferson, Front Avenue, NW Hoyt and 13th Avenue, except where specifically designated as allowed by the City Traffic Engineer.
- (B) No person may use roller skates, including in-line skates, skateboard, or other similar device upon any street within the City between the hours of sunset and sunrise.

When a person rides on or wears their wheels which are foot propelled, then they are arguably still within the Oregon Vehicle Code definition of “Pedestrian” : “[A]ny person afoot or confined in a wheelchair” (ORS 801.385). Since the foot is the propulsion force these folks are “afoot” in that they are using their feet to propel themselves. It is more clear they do not fit within the Oregon Vehicle Code definition of “bicycle”.

“Bicycle’ means a vehicle that:

- (1) Is designed to be operated on the ground on wheels;
- (2) Has a seat or saddle for use of the rider;
- (3) Is designed to travel with not more than three wheels in contact with the ground;
- (4) Is propelled exclusively by human power; and
- (5) Has every wheel more than 14 inches in diameter or two tandem wheels either of which is more than 14 inches in diameter” (ORS 801.150).

If these humans using wheels on or under their feet are pedestrians under the Oregon Vehicle Code law then they are subject to the same rules as pedestrians. But this group shares some similarities with bicycles, and travels at a speed greater than most other pedestrians, so the Oregon Vehicle Code does not really provide them with a legal existence that is a good fit.

Portland makes a change

In December of 2000, Portland City Commissioner Charlie Hales decided to lead Portland away from the restricted status imposed upon skates and boards by the Portland city ordinance. Following examples previously set by New York, Minneapolis, and The Dalles, Oregon, Hales asked for legislation premised upon the vision that nonmotorized vehicles can coexist with motorized vehicles in the streets. Preliminary response to a proposed special law was mixed, such as a newspaper editorial entitled “Hales’ Plan for New and Better Road-kill” suggesting that placing skaters on the streets with trucks and cars at night would “boost the number of young organ donors.”² Portland’s mayor, Vera Katz, usually a leader on forward looking urban planning issues, stated that she felt spending time on a skateboard ordinance in the City Council was “utterly foolish.”³ However, legitimizing the presence of boarders and bladers on city streets and sidewalks had considerable grass roots support, and after some amendment and modification the final draft was passed after hearings by the City Council on December 27, 2000.

² David Reinhard editorial, The Oregonian (December 17, 2000)

³ “Hales Charts Course Amid Political Storms” by Scott Learn of The Oregonian (February 25, 2001)

Portland's brave new world

The new law went into effect on January 26, 2001. It amends and replaces Portland City Code Section 16.70.410 with five major provisions.

1. Area of coverage

The new law allows roller skates, in-line skates, skateboards, scooters, and other similar devices powered exclusively by human power upon any sidewalk in the City of Portland except in the downtown core area [between SW Jefferson, Naito Parkway, NW Hoyt, and 13th Avenue]. This human powered vehicle group may also use any city street, roadway, or sidewalk except on Portland's TriMet bus mall which is a prohibited area.

2. Helmets

All persons 16 years of age and younger must wear helmets on streets, sidewalks, and bridges.

3. Lights/Reflector

Between sunset and sunrise a white light and rear red light or reflector is required.

4. Same laws as bicycles

The new law incorporates Oregon Vehicle Code provisions relating to bicycles. This means that skaters and boarders must follow the main rules for bike riders: yield to pedestrians but be yielded to in marked or unmarked crosswalks by motor vehicles, not pass motor vehicles on the right except when safe to do so (in the absence of a special bike or skate/board/scooter lane), and ride as far to the right on two lane roadways as practicable.

5. Violations and studies

Violation of the provisions of the new municipal ordinance by skaters and boarders results in up to a \$25 fine, levied against the parents in the case of minors. Finally, the Portland Police Bureau is charged with collecting and reporting annual findings to the City Council regarding injuries and deaths of non-motorized roadway users, and the Portland Department of Transportation (PDOT) must designate "preferred skating routes" in the downtown core area and outlying areas of the city for distribution by April 1, 2001.

Conclusion

Portland's change in legal status for boarders and skaters has elevated their legal status from legal no-man's land to the legal equivalent of bicyclists on city streets and sidewalks. With their new legal status

comes certain responsibilities such as lights or reflectors at night, yielding to pedestrians on sidewalks, using bicycle lanes when available, as riding as far to the right as practicable in the roadway. However, Portland's step is a good move in the direction of legitimizing non-motorized users in the roadway, and creating a more receptive legal environment for alternative transportation within the city. The proposed system of "preferred skating routes" could lead to positive encouragement for young people in making their claim to a share of the streets, and bicyclists will likely embrace additional non-motorized company in the city's bicycle lanes. A more receptive legal atmosphere will result in more young people using the city's streets and sidewalks to get to school, run errands, and ultimately create the potential for independence from the motor vehicle that lasts into adulthood. Our bodies, our species, and our city will all be the better for it.

Part IV: Pedestrian Legal Remedies

Accidents And Insurance

All too often a pedestrian is seriously injured in an accident caused by a negligent driver and later investigation reveals that the motorist was uninsured, sometimes leaving the pedestrian without any insurance benefits. All too often, serious accidents are caused by people who are irresponsible drivers without insurance. However, there are two types of insurance pedestrians who are also automobile drivers can obtain in order to protect themselves.

Personal Injury Protection

Every Oregon motorist's insurance policy contains Personal Injury Protection (also known as "PIP"). PIP provides certain minimum coverages and can be "stacked," meaning that when more than one policy is applicable the benefits accumulate for the benefit of the claimant. The Oregon Revised Statutes (ORS) contain certain statutory minimums for PIP coverage which include up to \$15,000 for medical expenses and one year of wage loss up to \$1,250 per month. PIP is "no-fault" in that an injured party may make a claim against the policy regardless of who was at fault in the accident.

Uninsured and Underinsured Motorist Coverage

The second type is uninsured (UM) or underinsured (UIM) motorist coverage, insuring for all sums the uninsured "shall be legally entitled to recover as damages for bodily injury or death caused by accident and arising out of the ownership, maintenance or use of an uninsured motor vehicle" (ORS 742.500). UM or UIM coverage provides coverage as if the uninsured driver had a liability insurance policy. The injured person makes a claim against his or her own insurance policy for their damages. In the case of a serious accident caused by an uninsured driver or underinsured driver, UM or UIM coverage is the best protection for an injured pedestrian. While the Oregon statutory minimum is \$25,000, with today's high medical costs it is advisable to have at least four times that amount. As with most insurance purchases, the higher ranges of insur-

ance coverage provide more insurance for fewer dollars above the statutory minimum so higher limits policies are usually a very good deal for the dollar. UM and UIM coverage applies to pedestrians, so long as an accident is the fault of an uninsured or underinsured driver.

The legal relationship between the various types of coverage in a serious accident is quite complex. In some instances, coverage may be denied or limited depending upon policy language and benefit amounts. Seek professional assistance from a lawyer knowledgeable about insurance claims before you accept any representations about whether an accident is covered by a particular insurance policy. Frequently, serious accidents are caused by uninsured or underinsured drivers. Even if an accident is caused by the pedestrian, PIP coverage (which is no-fault) will apply to provide some benefits. Pedestrians would be well advised to purchase UM or UIM policies with high policy limits to protect themselves from major injuries caused by financially irresponsible drivers.

What To Do If You're In An Accident

What should you do if you are in a collision with a motor vehicle? First, **Be Prepared!** While the odds may be pretty good that you will never be involved in an accident there are several tips you can follow which will make any accident less of a disruption in your life. An understanding of the fundamentals of insurance, medical services, and the legal system will help you later after your accident. This article is a very basic primer on these areas.

If you are in an accident

If you do get in a wreck with an automobile, make sure that you obtain complete and accurate information about the automobile driver. It is an unfortunate fact of modern life that some people with driving and insurance problems carry false identification. Make sure that the driver shows you an official document such as a driver license or other photo ID as well as a certificate of current insurance coverage before they leave the scene of the accident. If they will not do so, then call the police. Many people think that calling the police will result in investigation and preparation of a police report. However, unless it is apparent to the responding police that there has been serious injury in the accident, an impaired driver, or a major violation of law, they will usually not prepare a report, but instead will merely assist in exchange of information. Many serious injuries are not visible at the scene of an accident when a person's adrenaline is flowing and there is the usual confusion about what to do next. If possible, return to the scene or send a friend with a camera and take photographs of skid marks, glass, or marks on the road showing point of impact, direction, speed, or force. Try to document what the conditions were like and how the accident happened. Time after time, victims are outraged and disappointed when a motorist who freely admitted to being at fault at the scene later changed his or her story in an attempt to shift fault.

Medical treatment

If you have any question at all about whether or not you are injured, you should immediately go to an emergency room or get in to see your regular doctor. Many internal injuries, including closed head brain injuries, as well as soft tissue neck and back injuries are not fully appreciated by the injured person until some time has passed since the accident. It is important that you document your injuries so that later, if need be, you can show through proof from a medical person that your injuries were caused by the accident.

Insurance

Most people do not realize that their automobile insurance policy also covers them while they are on foot. This is important for pedestrians as “insurance consumers,” because everyone who has an automobile insurance policy is paying part of each premium dollar toward coverage that will apply if the insured person is injured as a pedestrian or bicyclist.

For example, if you are hit by an uninsured drunk driver one afternoon and seriously injured, it is important to realize that your own automobile insurance will provide two types of coverage for you. First, Personal Injury Protection (PIP) will pay for your medical bills and loss of income. PIP is a part of your own policy and will apply in every pedestrian accident regardless of whether or not the other person is insured, and regardless of whose fault caused the accident. It is “No fault” coverage. “No fault” means that even if an accident is your fault, PIP protection will cover you. Even if you have no car insurance because you are not a car owner, you may be covered by the car insurance policy for your parents or your employer.

The second type of applicable coverage is Uninsured/Underinsured Motorist Coverage (UM/UIM), a legally required part of every automobile insurance policy. UM/UIM may provide an important safety net for pedestrians whose injuries are a result of the fault of another person who has no insurance, or insufficient insurance to cover the damages resulting from the accident. UM/UIM coverage may pay not only for medical services and wage loss, but also for pain and suffering, interference with activities, future impairment of earning capacity and punitive (or punishment) damages. All pedestrians should have some sort of insurance coverage, and I recommend to my clients that they seriously consider raising the limits of their PIP (statutory minimum \$15,000) and UM/UIM (statutory minimum \$25,000) coverage above the minimum amounts. If you shop for insurance, you will discover that the cost per dollar of coverage is relatively inexpensive once you get above the minimum coverage amounts. If you are ever unlucky enough to get seriously

hurt, you will be greatly relieved if you at least have adequate insurance to cover your damages.

Should I handle my own case?

If you are seriously injured and the driver is at fault and insured, it is likely that you will receive solicitation letters, “courtesy copies” of the police report, and even refrigerator magnets (argh!) from lawyers who want to represent you. Remember, lawyer services are like any other personal service — be an educated consumer, make your selection carefully after interviewing several people who come highly recommended by people you trust. If your accident involves minor injury or property damage, it will be more difficult to attract excellent counsel. If you have an accident that is clearly the fault of the other party and don't mind the hassle of bird dogging your claim then go for it and save the money (usually one-third) you would otherwise pay for a lawyer. If you do decide to go it alone, there are resources available. Our law firm, in conjunction with Bicycle Transportation Alliance (BTA) and the Willamette Pedestrian Coalition (WPC), conduct frequent legal clinics for people trying to learn about their legal rights. Our goal is to provide important information that non-motorized road users need to know about the legal system. Call the BTA at (503) 226-9679 or the WPC at (503) 223-1597 for the date of the next clinic. Our office has also posted a number of Oregon laws and information on our web site. Check it out and you may find the text of the law that applies to your case at www.stc-law.com.

Why am I being treated this way?

After your accident, you feel like a victim. For some people, dealing with the other driver, medical services and insurance is smooth and uneventful. But for many people, they are shocked when the expected “benefit delivery system,” turns out to be a “benefit denial system.” Every injured person is entitled to be treated with respect and courtesy. Questions about insurance coverage, medical services costs, and available benefits should be answered fully and without hesitation, and no person should be pressured to settle their claim. If you do not have the type of positive experience described above, something is wrong, and you should discuss these issues with a trusted friend or family member, or consult with an attorney. In any event, as an accident victim you have a right not to be pushed around by the system which supposedly exists to help you recover from your injuries; no one should be allowed to add insult to your injuries.

Citizen Initiated Prosecution

Law enforcement agencies do not always have the resources or the legal understanding of laws from a pedestrian perspective to investigate and issue citations for traffic law violations. For example, in Portland, city police maintain a departmental policy of facilitating exchange of information between the parties to an accident, but not investigating or issuing citations in traffic accidents unless one of the parties is taken by ambulance to the hospital, or the driver has an outstanding warrant or a suspended license. And if the police assist at a collision scene, the investigating officer still has discretion not to issue a traffic ticket, even where there may be a fairly clear violation of the Oregon Vehicle Code. It is often an unpleasant surprise to find out that a motorist accepting fault at the scene later denies it when it comes time to make an insurance claim.

Background

But citizens must consider fully the high costs associated with more intensive traffic accident investigation by police. After all, the civil justice system serves pretty well in sorting out who is at fault in most accidents. Police officers' primary mission is to protect public safety; and in the great majority of collisions, fault is clear and investigation of accidents is more appropriately performed by private parties who must figure who and how much to pay for any damages. Regardless of where one draws the line, there is a point after which it is just more important for a cop to be working on a criminal case than answering a radio call to conduct a traffic investigation for an intersection collision. However, when a motorist disregards the rights of a vulnerable road user it is sometimes worth it to pursue an actual conviction for a traffic violation.

We can do it ourselves

And, without requiring any change in law or policy, Oregon statutes already contain the legal tools for citizens to initiate prosecution of traffic law-breakers. Oregon law allows a citizen to initiate traffic violation prosecutions in state court, AND to have police help (required by

the Oregon statute). But remember, the Oregon statute of limitations for violations is only six months; if the action is not filed within that time then the right to pursue a citizen violation is lost! After the initial report is taken by the police or the traffic court clerk and the citizen signs the Oregon Uniform Citation and Complaint, the completed paperwork is served by the police on the bad driver summoning them to traffic court to face the charges in a non-jury trial in front of a traffic judge. The complaining citizen gives an informal presentation of the case, the judge hears evidence and testimony, and if convicted the bad driver receives a conviction and fine for a moving violation — the same if the ticket were issued by a police officer!

The process, known as an “Initiation of Violation Proceeding” is important for vulnerable roadway users — we usually get banged up the most in a collision with a car. Too many of these wrecks occur because some drivers fail to yield or share the road. These drivers are among the most dangerous drivers on the road and it is important that their driving records reflect it. Also, insurance adjusters frequently fail to give adequate recognition to legal rights of non-motorized roadway users. Whether ignorant of the law or just hostile to the other side, many insurance adjusters see a collision case and instinctively favor their insured motorist. Since only the most serious collisions involve law enforcement accident investigation, the person who is hurt after a clear cut violation of the traffic law by a motorist is often disappointed to learn that the driver (who was clearly admitting fault at the scene) is now claiming the other person was at fault. On the other hand if the official court record contains a citation and traffic court conviction of the driver, then the insurance adjuster will be hard pressed to ignore the true liability picture.

Follow the recipe

The Oregon statute is detailed and task specific. It includes every step of the process. The exact text is printed below because it may be necessary to show it to the authorities. Few law enforcement personnel are likely to have direct experience with the process when it is initiated by a citizen; but most officers are very familiar with the Oregon Uniform Citation and Complaint form (the statewide “ticket book”). The law requires that the officer facilitate the process. If you dead-end with the officer who first responds then try the department non-emergency and/or hit and run traffic phone number. In rural areas, state police and sheriff officers share jurisdiction. The gravity of any injury and seriousness of the motorist’s traffic violation will greatly influence the officer’s response. Filing these cases over petty traffic standoffs is going to stress a tax-poor law enforcement and court system struggling to contain Oregon’s dangerous

traffic offenders. But in collisions resulting in injury in which the driver commits a clear violation of the traffic laws, a traffic violation conviction is an option that may be important later to clarify the legal cause of the accident and to make a legal record of the driver's law violation.

How to initiate a citizen initiated prosecution (yourself)

Learn the lingo and read ORS 153.058 so you can explain it to someone who has never heard of it and will likely not believe such an unheard of procedure exists until you actually show them the law. Our website, www.stc-law.com, contains a how-to guide as well as forms and accounts from other citizens who have successfully used the process.

1. Contact the officer who investigated your accident or facilitated exchange of traffic accident information, any other officer involved in your accident, the shift sergeant for that unit on that shift at the time of your accident, the commander for the unit, the executive officer's office (Chief, Sheriff, whatever), the District Attorney's office in your county, the City Attorney office in your city, the traffic department clerk in your local courthouse, or just about any staffer willing to speak with you about it in the courthouse or police station, and show them the statute and this article. If they don't know about the process but are willing to ask someone about it, you will probably succeed in getting your case started if you are willing to allow the process to lumber up to speed. REMEMBER, PER ORS 131.125, YOU ONLY HAVE SIX MONTHS AFTER THE DATE OF THE INCIDENT TO INITIATE PROCEEDINGS.
2. Once you get a law enforcement officer willing to commence your violation proceeding then work through the process with them. They are supposed to create and send a summary of a complaint (which you may be required to swear to and sign), to the clerk's office for issuance of a summons. The Oregon Uniform Traffic Citation and Complaint Form may be what most officers choose for issuance of the case. Multnomah County and Portland traffic system staffers should know about this process and may help another jurisdiction trying to follow the law and allow citizens to exercise their legal rights.

If an unhelpful person points out that ORS 153.058 says "A person other than an enforcement officer 'may' commence a violation proceeding..." so as to defeat your effort you must point out that the statute does not allow ANY discretion by the officer; the case MUST be commenced once the citizen's complaint is lodged. Further, the court has no discretion in issuing the summons as ORS 153.058 clearly states "the court 'shall' issue a summons to be delivered...". There is some discretion provided to the court to amend or dismiss a complaint, but issuance of properly presented complaints should not be opposed.

3. Ask the officer who issued your case to help you find out about how to present your case. As in traffic court you will be in the position usually occupied by the officer who wrote the ticket. Identification of the driver and presentation of evidence can be handled by you and your witnesses. The police or courts will help you issue subpoenas to other witnesses in advance of court. If you do not feel like you will be able to present your case then ask for help from the police officer or a friend; again, if you convince the judge at the trial that the defendant violated the law then the conviction that results will be like any other moving violation. If you need more help our office may be able to help, depending on the facts of your case.

The Statute Creating Your Right to Prosecute a Violation (ORS 153.058):

153.058 Initiation of violation proceeding by private party.

- (1) A person other than an enforcement officer may commence a violation proceeding by filing a complaint with a court that has jurisdiction over the alleged violation. The filing of the complaint is subject to ORS 153.048. The complaint shall be entered by the court in the court record.
- (2) A complaint under this section must contain:
 - (a) The name of the court, the name and address of the person bringing the action and the name and address of the defendant.
 - (b) A statement or designation of the violation that can be readily understood by a person making a reasonable effort to do so and the date, time and place at which the violation is alleged to have occurred.
 - (c) A certificate signed by the complainant stating that the complainant believes that the named defendant committed the violation specifically identified in the complaint and that the complainant has reasonable grounds for that belief. A certificate conforming to this section shall be deemed equivalent of a sworn complaint. Complaints filed under this section are subject to the penalties provided in ORS 153.990.
- (3) Upon the filing of a complaint under this section, the court shall cause a summons to be delivered to the defendant and shall deliver a copy of the complaint to the district attorney for the county in which the complaint is filed. The court may require any enforcement officer to serve the summons.
- (4) If the complaint does not conform to the requirements of this section, the court shall set it aside upon motion of the defendant made before the entry of a plea. A pretrial ruling on a motion to set aside may be appealed by the state.
- (5) A court may, acting in its sole discretion, amend a complaint filed under the provisions of this section.
- (6) A court shall dismiss a complaint filed under this section upon the motion of the district attorney for the county or of the city attorney for a city if:
 - (a) The district attorney or city attorney has brought a proceeding against the defendant named in the complaint or intends to bring a proceeding against the defendant named in the complaint; and

- (b) The proceeding is brought by the district attorney or city attorney by reason of the same conduct alleged in the complaint.
- (7) Any political subdivision of this state may require by ordinance that violation proceedings for the purpose of enforcing the charter or ordinances of the political subdivision may not be commenced in the manner provided by this section and that those proceedings may be commenced only by enforcement officers.
- (8) A person other than an enforcement officer may commence a violation proceeding under this section only for:
 - (a) Boating violations under ORS chapter 830, or any violation of rules adopted pursuant to ORS chapter 830 if the violation constitutes an offense;
 - (b) Traffic violations under ORS chapters 801 to 826, or any violation of rules adopted pursuant to those chapters if the violation constitutes an offense;
 - (c) Violations under the wildlife laws, as described in ORS 496.002, or any violation of rules adopted pursuant to those laws if the violation constitutes an offense;
 - (d) Violations under the commercial fishing laws, as described in ORS 506.001, or any violation of rules adopted pursuant to those laws if the violation constitutes an offense;
 - (e) Violations of ORS 618.121 to 618.161, and violation of rules adopted pursuant to those laws if the violation constitutes an offense; or
 - (f) Violations of the dog control laws under ORS 609.040 to 609.110 or 609.135 to 609.190 or, except as may be provided otherwise by county law, violations of county dog control ordinances adopted as authorized under ORS 609.015 or 609.135.

Getting Medical Bills Paid And Wage Loss Reimbursed

If you are pedestrian injured by a car, you may be surprised when your health insurance denies your initial claim for medical services. If you own a car, your Personal Injury Protection is your primary coverage.

Personal Injury Protection (PIP) is statutorily required in all personal automobile policies issued in Oregon. It is a no-fault coverage that is designed to provide benefits regardless of who is at fault in causing the injuries. The benefits required in the PIP policy are also statutorily mandated. PIP policies are required to cover medical, funeral, wage and essential services. Even if you do not own a car, you may qualify for PIP benefits if you reside with someone who owns a car or if you are a student and your parents have auto insurance with PIP benefits. If in doubt, make the PIP claim.

A PIP policy issued in Oregon must provide coverage for at least \$15,000 for reasonable and necessary expenses incurred within one year from the date of the accident for medical, hospital, dental, surgical, ambulance and prosthetic services.

Medical bills are paid at a statutorily determined amount. ORS 742.525(1) prohibits health care providers from billing persons who receive personal injury protection benefits more than they charge the general public or an amount that exceeds the fee schedules for medical and other services published under Oregon workers' compensation laws. In other words, if your health care provider charged \$90 for your treatment and the PIP payment was \$80 under the fee schedule, you are not responsible for the \$10 difference.

PIP also covers wage loss if you are unable to work due to your injuries for more than 14 days. The PIP benefit is 70% of your normal wages up to \$1250 per month. Like PIP medical benefits, the PIP wage benefit is limited to 52 weeks.

If you are a homemaker or not “engaged in a remunerative occupation” and your disability continues for more than 14 days, the PIP policy will provide some coverage to pay for essential services you normally provide. For example, PIP will pay for housekeeping services for a homemaker. PIP will not pay a relative or someone who resides with you and the benefits is limited to \$30 per day up to an aggregate of 52 weeks.

If you are a parent of a minor child and are hospitalized for 24 hours because of covered injuries, PIP will pay \$25 per day for child care. Payments begin after 24 hours of hospitalization and continue until you are able to return to work or, if you are not employed outside of the home, until you are able to resume performing the essential services you normally perform. This PIP benefit is limited to \$750.

If the covered injuries are fatal, PIP provides \$5000 coverage for funeral expenses.

The PIP limitations cited in this article refer to the statutory minimum requirements. Every PIP policy must at a minimum provide these benefits. Your policy may provide more coverage.

If you are injured as a pedestrian by a vehicle, you should notify your automobile insurance company right away, report the claim and request a PIP application. Most PIP insurers will not make any payments under the policy until the application is completed and signed by the injured person.

Usually PIP claims are processed uneventfully. The claims adjuster assigned to handle your claim may require verification before certain payments can be made. For example, if you are making a claim for lost wages, the claim representative may require verification from your doctor that you are unable to work due to your injuries, and verification of your wages from your employer. If you are making a claim for medical bills, the insurer may request chart notes or a report from your physician. All policies require you to cooperate in the investigation of the claim. Also, if you are making a claim, you have the burden to prove your claim is covered under the policy. Therefore, you will need to provide at least a limited authorization for your doctor and your employer to provide information to your insurer.

Occasionally your PIP insurer will question whether your doctor’s treatment plan is both reasonable and necessary. It may require you to submit to an “IME” (an “insurer medical evaluation”). If there is a dispute, it is typically resolved in arbitration. The rules of arbitration are beyond the scope of this article. If you are involved in a dispute with your insurer, you may need to contact an attorney to help you.

While your insurer can question the need for medical services once they are provided, they may not limit or restrict access to providers or their services. So your insurer may argue that your doctor's treatment is not reasonable, but it can not tell you that must choose treatment from one of their doctors. They can not assign you to a "managed care company."

If your injuries were caused by somebody else's negligence and you recover damages from that person or his insurer, you may need to repay the PIP benefits you received. The laws regarding PIP reimbursement are complex and are frequently interpreted by the courts. A complete discussion the laws regarding PIP reimbursement, liens and subrogation is beyond the scope of this article. Before you return money to your PIP insurer, you should check with an attorney regarding your obligation to do so.

If your PIP benefits are exhausted, you qualify for benefits under policy of the auto that struck you, regardless of who is at fault in the accident. However, if you have other health insurance available, you must submit the bills to that insurance first.

EXAMPLE: Walker was struck by Driver. Walker has car insurance through State Farm. Walker also has Health Insurance through his employer. Driver has auto insurance including PIP through Allstate. Walker has medical bills will be paid as follows: The first \$15,000 of medical bills will be paid by his own State Farm PIP coverage. After Walker's own State Farm PIP medical benefits are exhausted, his bills should be submitted to his health insurer. The bills then will be paid according to the terms and conditions of his health insurance. If there are co-pays or medical services that are denied by the health insurance, the bills are payable under Defendant's Allstate PIP.

Many, if not most, health insurers want to be paid back if you recover damages from the person who hit you. Like PIP, the law covering your reimbursement or subrogation obligation is complex and depends on interpreting individual policy language as well as existing court cases. If your health insurance company wants to be repaid, you should contact an attorney to discuss your obligations.

Obviously the most important thing to do if you are injured as a pedestrian by a car is to get immediate and appropriate medical attention. Other things not to forget are:

- Report the accident to the police and the DMV. You can get that form at www.oregon.gov/ODOT/DMV/forms/32intermediate.shtml.
- Gather the other driver's contact and insurance information and keep it in a safe place.

- Get the names and contact information for any witnesses and keep it in a safe place.
- Contact your insurance company and make a Personal Injury Protection (PIP) claim.
- Document your lost wages and any other expenses you incur.

If your claim is denied or your injuries are serious, you should consider talking to an attorney about your rights.

Personal Injury Protection Statutes

742.520 Personal injury protection benefits for motor vehicle liability policies; applicability; definitions for ORS 742.520 to 742.542.

- (1) Every motor vehicle liability policy issued for delivery in this state that covers any private passenger motor vehicle shall provide personal injury protection benefits to the person insured thereunder, members of that person's family residing in the same household, children not related to the insured by blood, marriage or adoption who are residing in the same household as the insured and being reared as the insured's own, passengers occupying the insured motor vehicle and pedestrians struck by the insured motor vehicle. "Personal injury protection benefits" means the benefits described in this section and ORS 742.524 and 742.530.
- (2) Personal injury protection benefits apply to a person's injury or death resulting:
 - (a) In the case of the person insured under the policy and members of that person's family residing in the same household, from the use, occupancy or maintenance of any motor vehicle, except the following vehicles:
 - (A) A motor vehicle, including a motorcycle or moped, which is owned by any of such persons and which is not covered by a motor vehicle liability insurance policy that provides personal injury protection benefits with respect to the use, occupancy and maintenance of that vehicle;
 - (B) A motorcycle or moped which is not owned by any such persons, but this exclusion applies only when the injury or death results from such person's operating or riding upon the motorcycle or moped; and
 - (C) A motor vehicle not included in subparagraph (A) or (B) of this paragraph and not a private passenger motor vehicle. However, this exclusion applies only when the injury or death results from such person's operating or occupying the motor vehicle.
 - (b) In the case of a passenger occupying or a pedestrian struck by the insured motor vehicle, from the use, occupancy or maintenance of the vehicle.

- (3) Personal injury protection benefits consist of payments for expenses, loss of income and loss of essential services as provided in ORS 742.524.
- (4) An insurer shall pay all personal injury protection benefits promptly after proof of loss has been submitted to the insurer.
- (5) The potential existence of a cause of action in tort does not relieve an insurer from the duty to pay personal injury protection benefits.
- (6) Disputes between insurers and beneficiaries about the amount of personal injury protection benefits, or about the denial of personal injury protection benefits, shall be decided by arbitration except that if all requirements for bringing an action in the small claims department of a justice or circuit court are met, the insured may elect to file such an action rather than submitting the claim to arbitration.
- (7) As used in ORS 742.520 to 742.542:
 - (a) "Motor vehicle" means a self-propelled land motor vehicle or trailer, other than:
 - (A) A farm type tractor or other self-propelled equipment designed for use principally off public roads, while not upon public roads;
 - (B) A vehicle operated on rails or crawler-treads; or
 - (C) A vehicle located for use as a residence or premises.
 - (b) "Motorcycle" and "moped" have the meanings give those terms in ORS 801.345 and 801.365.
 - (c) "Occupying" means in, or upon, or entering into or alighting from.
 - (d) "Pedestrian" means a person while not occupying a self-propelled vehicle.
 - (e) "Private passenger motor vehicle" means a four-wheel passenger or station wagon type motor vehicle not used as a public or livery conveyance, and includes any other four-wheel motor vehicle of the utility, pickup body, sedan delivery or panel truck type not used for wholesale or retail deliver other than farming, a self propelled mobile home, and farm truck.

742.522 Binding arbitration under ORS 742.520; costs.

- (1) Arbitration under ORS 742.520 (6) is binding on the parties to the arbitration.
- (2) Costs to the insured of the arbitration proceeding shall not exceed \$100 and all other costs of arbitration shall be borne by the insurer. As used in this subsection, "costs" does not include attorney fees or expenses incurred in the production of evidence or witnesses or the making of transcripts of the arbitration proceedings. [Formerly 743.802]

742.524 Contents of personal injury protection benefits; deductibles.

- (1) Personal injury protection benefits as required by ORS 742.520 shall consist of the following payments for the injury or death of each person:

- (a) All reasonable and necessary expenses of medical, hospital, dental, surgical, ambulance and prosthetic services incurred within one year after the date of the person's injury, but not more than \$15,000 in the aggregate for all such expenses of the person. Expenses of medical, hospital, dental, surgical, ambulance and prosthetic services shall be presumed to be reasonable and necessary unless the provider is given notice of denial of the charges not more than 60 calendar days after the insurer receives from the provider notice of the claim for the services. At any time during the first 50 calendar days after the insurer receives notice of claim, the provider shall, within 10 business days, answer in writing questions from the insurer regarding the claim. For purposes of determining when the 60 day period provided by this paragraph has elapsed, counting of days shall be suspended if the provider does not supply written answers to the insurer within 10 days and shall not resume until the answers are supplied.
 - (b) If the injured person is usually engaged in a remunerative occupation and if disability continues for at least 14 days, 70 percent of the loss of income from work during the period of the injured person's disability until the date the person is able to return to the person's usual occupation. This benefit is subject to a maximum payment of \$1,250 per month and a maximum payment period in the aggregate of 52 weeks. As used in this paragraph, "income" includes but is not limited to salary, wages, tips, commissions, professional fees and profits from an individually owned business or farm.
 - (c) If the injured person is not usually engaged in a remunerative occupation and if disability continues for at least 14 days, the expenses reasonable incurred by the injured person for essential services in lieu of the services the person would have performed without income during the period of the person's disability until the date the person is reasonably able to perform such essential services. This benefit is subject to a maximum payment of \$30 per day and a maximum payment period in the aggregate of 52 weeks.
 - (d) All reasonable and necessary funeral expenses incurred within one year after the date of the person's injury, but not more than \$2,500.
 - (e) If the injured person is a parent of a minor child and is required to be hospitalized for a minimum of 24 hours, \$15 per day for child care, with payments to begin after the initial 24 hours of hospitalization and to be made for as long as the person is unable to return to work if the person is engaged in a remunerative occupation or as long as the person is unable to perform essential services that the person would have performed without income if the person would have performed without income if the person is not usually engaged in a remunerative occupation, but not to exceed \$450.
- (2) With respect to the insured person and members of that person's family residing in the same household, an insurer may offer forms of coverage for the benefits required by subsection (1)(a), (b) and (c) of this section with deductibles of up to \$250.

742.526 Primary nature of benefits.

- (1) The personal injury protection benefits with respect to:
 - (a) The insured and members of the family of the insured residing in the same household injured while occupying the insured motor vehicle shall be primary.
 - (b) Passengers injured while occupying the insured motor vehicle shall be primary.
 - (c) The insured and members of family residing in the same household injured as pedestrians shall be primary.
 - (d) The insured and members of family residing in the same household injured while occupying a motor vehicle not insured under the policy shall be excess.
 - (e) Pedestrians injured by the insured motor vehicle, other than the insured and members of family residing in the same household, shall be excess over any other collateral benefits to which the injured person is entitled, including but not limited to insurance benefits, governmental benefits or gratuitous benefits.
- (2) The personal injury protection benefits may be reduced or eliminated, if it is so provided in the policy, when the injured person is entitled to receive, under the laws of this state or any other state or the United States, workers compensation benefits or any other similar medical or disability benefits.

742.528 Notice of denial of payment of benefits.

An insurer who denies payment of personal injury protection benefits to or on behalf of an insured shall:

- (1) Provide written notice of the denial, within 60 calendar days of receiving a claim from the provider, to the insured, stating the reason for the denial and informing the insured of the method for contesting the denial; and
- (2) Provide a copy of the notice of the denial, within 60 calendar days of receiving a claim from the provider, to a provider of services under ORS 742.524 (1)(a).

742.530 Exclusions from coverage.

- (1) The insurer may exclude from the coverage for personal injury protection benefits any injured person who:
 - (a) Intentionally causes self-injury; or
 - (b) Is participating in any prearranged or organized racing or speed contest or practice or preparation for any such contest.
- (2) The insurer may exclude from the coverage for the benefits required by ORS 742.524(1)(b) and (c) any person injured as a pedestrian in an accident outside this state, other than the insured person or a member of that person's family residing in the same household.

742.532 Benefits may be more favorable than those required by ORS 742.520, 742.524 and 742.530.

Nothing in ORS 742.520 to 742.542 is intended to prevent an insurer from providing more favorable benefits than the personal injury protection benefits described in ORS 742.520, 742.524 and 742.530.

742.534 Reimbursement of other insurers paying benefits; arbitrating issues of liability and amount of reimbursement.

- (1) Except as provided in ORS 742.544, every authorized motor vehicle liability insurer whose insured is or would be held legally liable for damages for injuries sustained in a motor vehicle accident by a person for whom personal injury protection benefits have been furnished by another such insurer, or for whom benefits have been furnished by an authorized health insurer, shall reimburse such other insurer for the benefits it has so furnished if it has requested such reimbursement, has not given notice as provided in ORS 742.536 that it elects recovery by lien in accordance with that section and is entitled to reimbursement under this section by the terms of its policy. Reimbursement under this subsection, together with the amount paid to injured persons by the liability insurer, shall not exceed the limits of the policy issued by the insurer.
- (2) In calculating such reimbursement, the amount of benefits so furnished shall be diminished in proportion to the amount of negligence attributable to the person for whom benefits have been so furnished, and the reimbursement shall not exceed the amount of damages legally recoverable by the person.
- (3) Disputes between insurers as to such issues of liability and the amount of reimbursement required by this section shall be decided by arbitration.
- (4) Findings and awards made in such an arbitration proceeding are not admissible in any action at law or suit in equity.

742.536 Notice of claim or legal action to insurer; insurer to elect manner of recovery of benefits furnished; lien of insurer.

- (1) When an authorized motor vehicle liability insurer has furnished personal injury protection benefits, or an authorized health insurer has furnished benefits, for a person injured in a motor vehicle accident, if such injured person makes claim, or institutes legal action, for damages for such injuries against any person, such injured person shall give notice of such claim or legal action to the insurer by personal service or by registered or certified mail. Service of a copy of the summons and complaint or copy of other process served in connection with such a legal action shall be sufficient notice to the insurer, in which case a return showing service of such notice shall be filed with the clerk of the court but shall not be a part of the record except to give notice.
- (2) The insurer may elect to seek reimbursement as provided in this section for benefits it has so furnished, out of any recovery under such claim or legal action, if the insurer has not been a party to an inter-insurer reimbursement proceeding with respect to such benefits under ORS 742.534 and is entitled by the terms of its policy to the benefit of this section. The insurer shall give written notice of such election within 30 days from the receipt of notice or knowledge of such claim or legal action to the person making claim or instituting legal action and to the person against whom claim is made or legal action instituted, by personal service or by registered or certified mail. In the case of a legal action, a return showing service of such notice of election shall be filed with the clerk of the court but shall not be a part of the record except to give notice to the claimant and the defendant of the lien of the insurer.

- (3) If the insurer so serves such written notice of election and, where applicable, such return is so filed:
- (a) The insurer has a lien against such cause of action for benefits it has so furnished, less the proportion, not to exceed 100 percent, of expenses, costs and attorney fees incurred by the injured person in connection with the recovery that the amount of the lien before such reduction bears to the amount of the recovery.
 - (b) The injured person shall include as damages in such claim or legal action the benefits so furnished by the insurer.
 - (c) In the case of a legal action, the action shall be taken in the name of the injured person.
- (4) As used in this section, “makes claim” or “claim” refers to a written demand made and delivered for a specific amount of damages and which meets other requirements reasonable established by the director’s rule.

742.538 Subrogation rights of insurers to certain amounts received by claimant; recovery actions against persons causing injury.

If a motor vehicle liability insurer has furnished personal injury protection benefits, or a health insurer has furnished benefits, for a person injured in a motor vehicle accident, and the interinsurer reimbursement benefit of ORS 742.534 is not available under the terms of that section, and the insurer has not elected recovery by lien as provided in ORS 742.536, and is entitled by the terms of its policy to the benefit of this section:

- (1) The insurer is entitled to the proceeds of any settlement or judgment that may result from the exercise of any rights of recovery of the injured person against any person legally responsible for the accident, to the extent of such benefits furnished by the insurer less the insurer’s share of expenses, costs and attorney fees incurred by the injured person in connection with such recovery.
- (2) The injured person shall hold in trust for the benefit of the insurer all such rights of recovery which the injured person has, but only to the extent of such benefits furnished.
- (3) The injured person shall do whatever is proper to secure, and shall do nothing after loss to prejudice, such rights.
- (4) If requested in writing by the insurer, the injured person shall take, through any representative not in conflict in interest with the injured person designated by the insurer, such action as may be necessary or appropriate to recover such benefits furnished as damages from such responsible person, such action to be taken in the name of the injured person, but only to the extent of the benefits furnished by the insurer. In the event of a recovery, the insurer shall also be reimbursed out of such recovery for the injured person’s share of expenses, costs and attorneys fees incurred by the insurer in connection with the recovery.
- (5) In calculating respective shares of expenses, costs and attorney fees under this section, the basis of allocation shall be the respective proportions borne to the total recovery by:
 - (a) Such benefits furnished by the insurer; and
 - (b) The total recovery less (a).

- (6) The injured person shall execute and deliver to the insurer such instruments and papers as may be appropriate to secure the rights and obligations of the insurer and the injured person as established by this section.
- (7) Any provisions in a motor vehicle liability insurance policy or health insurance policy giving rights to the insurer relating to subrogation or the subject matter of this section shall be construed and applied in accordance with the provisions of this section.

742.542 Effect of personal injury protection benefits paid.

Payment by a motor vehicle liability insurer of personal injury protection benefits for its own insured shall be applied in reduction of the amount of damages that the insured may be entitled to recover from the insurer under uninsured motorist coverage for the same accident but may not be applied in reduction of the uninsured motorist coverage policy limits.

742.544 Reimbursement for personal injury protection benefits paid.

- (1) A provider of personal injury protection benefits shall be reimbursed for personal injury protection payments made on behalf of any person only to the extent that the total amount of benefits paid exceeds the economic damages as defined in ORS 18.560 suffered by that person. As used in this section, "total amount of benefits" means the amount of money recovered by a person from:
 - (a) Applicable underinsured motorist benefits described in ORS 742.502 (2);
 - (b) Liability insurance coverage available to the person receiving the personal injury protection benefits from other parties to the accident;
 - (c) Personal injury protection payments; and
 - (d) Any other payments by or on behalf of the party whose fault caused the damages.
- (2) Nothing in this section required a person to repay more than the amount of personal injury protection benefits actually received.

Part V: Traffic Laws Relating to Pedestrians

Oregon Revised Statutes (ORS)

153.018 Schedule of penalties.

- (1) The penalty for committing a violation is a fine. The law creating a violation may impose other penalties in addition to a fine but may not impose a term of imprisonment.
- (2) Except as provided in this section, a sentence to pay a fine for a violation shall be a sentence to pay an amount not exceeding:
 - (a) \$720 for a Class A violation.
 - (b) \$360 for a Class B violation.
 - (c) \$180 for a Class C violation.
 - (d) \$90 for a Class D violation.
 - (e) The amount otherwise established by law for any specific fine violation.
- (3) If no special corporate fine is specified in the law creating the violation, a sentence to pay a fine for a violation committed by a corporation shall be in an amount not to exceed twice the fine established under this section for a violation by an individual. If a special corporate fine is specified in the law creating the violation, the sentence to pay a fine shall be governed by the law creating the violation.
- (4) If a person or corporation has gained money or property through the commission of a violation, instead of sentencing the defendant to pay the fine provided for in subsection (2) or (3) of this section, the court may sentence the defendant to pay an amount fixed by the court, not exceeding double the amount of the defendant's gain from the commission of the violation. For the purposes of this subsection, the defendant's gain is the amount of money or the value of property, as determined under ORS 164.115, derived from the commission of the violation, less the amount of money or the value of property, as determined under ORS 164.115, returned to the victim of the violation or seized by or surrendered to lawful authority before the time sentence is imposed. [1999 c.1051 §6; 2003 c.737 §103]

ORS 153.018 and 153.093 are the guideposts for traffic violations that apply to every case.

153.093 Minimum fine.

- (1) Notwithstanding any other provision of law, a court or violations bureau may not defer, waive, suspend or otherwise reduce the fine for a violation to an amount that is less than:
 - (a) 75 percent of the base fine amount established for the offense under ORS 153.125 to 153.145, if the offense is a Class A, B, C or D violation, or an unclassified violation, under ORS 153.012 and 153.015; or
 - (b) 20 percent of the base fine amount established for the offense under ORS 153.125 to 153.145, if the offense is a specific fine violation as described by ORS 153.015.
- (2) Nothing in this section:
 - (a) Affects the manner in which a court imposes or reduces monetary obligations other than fines.
 - (b) Allows a court to reduce any fine amount below a minimum fine amount established by statute for the offense.
 - (c) Affects the ability of a court to establish a payment schedule for fines imposed by the court.
- (3) For the purpose of determining whether a fine meets the requirements of subsection (1) of this section, the unitary assessment amount under ORS 137.290 and the county assessment amount under ORS 137.309 shall be included in calculating the amount required under subsection (1) of this section.
- (4) The Department of Revenue or Secretary of State may audit any court to determine whether the court is complying with the requirements of this section. In addition, the Department of Revenue or Secretary of State may audit any court to determine whether the court is complying with the requirements of ORS 137.290 (4) and 153.630 (4). The Department of Revenue or Secretary of State may file an action under ORS 34.105 to 34.240 to enforce the requirements of this section and ORS 137.290 (4) and 153.630 (4). [1999 c.1095 §3; 1999 c.1095 §5; 2003 c.14 §61; 2003 c.737 §104]

166.025 Disorderly conduct in the second degree.

- (1) A person commits the crime of disorderly conduct in the second degree if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, the person:
 - (a) Engages in fighting or in violent, tumultuous or threatening behavior;
 - (b) Makes unreasonable noise;
 - (c) Disturbs any lawful assembly of persons without lawful authority;
 - (d) Obstructs vehicular or pedestrian traffic on a public way;
 - (e) Congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse;
 - (f) Initiates or circulates a report, knowing it to be false, concerning an alleged or impending fire, explosion, crime, catastrophe or other emergency; or

It's a crime to obstruct pedestrian traffic!

- (g) Creates a hazardous or physically offensive condition by any act which the person is not licensed or privileged to do.
- (2) Disorderly conduct in the second degree is a Class B misdemeanor. [1971 c.743 §220; 1983 c.546 §5; 2001 c.104 §55; 2005 c.631 §1]

366.514 Use of highway fund for footpaths and bicycle trails.

- (1) Out of the funds received by the Department of Transportation or by any county or city from the State Highway Fund reasonable amounts shall be expended as necessary to provide footpaths and bicycle trails, including curb cuts or ramps as part of the project. Footpaths and bicycle trails, including curb cuts or ramps as part of the project, shall be provided wherever a highway, road or street is being constructed, reconstructed or relocated. Funds received from the State Highway Fund may also be expended to maintain footpaths and trails and to provide footpaths and trails along other highways, roads and streets.
- (2) Footpaths and trails are not required to be established under subsection (1) of this section:
 - (a) Where the establishment of such paths and trails would be contrary to public safety;
 - (b) If the cost of establishing such paths and trails would be excessively disproportionate to the need or probable use; or
 - (c) Where sparsity of population, other available ways or other factors indicate an absence of any need for such paths and trails.
- (3) The amount expended by the department or by a city or county as required or permitted by this section shall never in any one fiscal year be less than one percent of the total amount of the funds received from the highway fund. However:
 - (a) This subsection does not apply to a city in any year in which the one percent equals \$250 or less, or to a county in any year in which the one percent equals \$1,500 or less.
 - (b) A city or county in lieu of expending the funds each year may credit the funds to a financial reserve fund in accordance with ORS 294.525, to be held for not more than 10 years, and to be expended for the purposes required or permitted by this section.
 - (c) For purposes of computing amounts expended during a fiscal year under this subsection, the department, a city or county may record the money as expended:
 - (A) On the date actual construction of the facility is commenced if the facility is constructed by the city, county or department itself; or
 - (B) On the date a contract for the construction of the facilities is entered with a private contractor or with any other governmental body.

Oregon's 1% rule means that at least 1% of State Highway Funds must be spent for non-motorized users on highway or street construction projects. The law means what it says and can be an important tool to apply leverage for politicians, administrators, planners and activists seeking legal authority to fund non-motorized projects. See *Bicycle Transportation Alliance v. City of Portland*, 133 Or. App. 422, 891 P.2d 692, (1995) (upholding right to sue to enforce the 1% rule which is only a minimum level of funding).

- (4) For the purposes of this chapter, the establishment of paths, trails and curb cuts or ramps and the expenditure of funds as authorized by this section are for highway, road and street purposes. The department shall, when requested, provide technical assistance and advice to cities and counties in carrying out the purpose of this section. The department shall recommend construction standards for footpaths and bicycle trails. Curb cuts or ramps shall comply with the requirements of ORS 447.310 and rules adopted under ORS 447.231. The department shall, in the manner prescribed for marking highways under ORS 810.200, provide a uniform system of signing footpaths and bicycle trails which shall apply to paths and trails under the jurisdiction of the department and cities and counties. The department and cities and counties may restrict the use of footpaths and bicycle trails under their respective jurisdictions to pedestrians and nonmotorized vehicles, except that motorized wheelchairs shall be allowed to use footpaths and bicycle trails.
- (5) As used in this section, “bicycle trail” means a publicly owned and maintained lane or way designated and signed for use as a bicycle route. [1971 c.376 §2; 1979 c.825 §1; 1983 c.19 §1; 1983 c.338 §919; 1991 c.417 §7; 1993 c.503 §12; 1997 c.308 §36; 2001 c.389 §1]

742.518 Definitions for ORS 742.518 to 742.542.

As used in ORS 742.518 to 742.542:

- (6) “Pedestrian” means a person while not occupying a self-propelled vehicle other than a wheelchair or a similar low-powered motorized or mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is determined to be medically necessary for the occupant of the wheelchair or other low-powered vehicle.

Note that “pedestrian” includes bicyclists, skateboarders, and others using conveyances that are not “self propelled” which means the power does not come from the conveyance.

801.026 General exemptions; exceptions.

- (1) Persons, motor vehicles and equipment employed or used by a public or telecommunications utility, electric cooperative or by the United States, this state or any political subdivision of this state are exempt from the provisions of the vehicle code specified in subsection (3) of this section while on a highway and working or being used to service, construct, maintain or repair the facilities of a utility.
- (2) Persons, motor vehicles and equipment employed or being used in the construction or reconstruction of a street or highway are exempt from the provisions of the vehicle code specified in subsection (3) of this section if:
- They are within the immediate construction project as described in the governmental agency contract, if there is a contract; and
 - The work is being done in an area that is signed in accordance with the manual adopted under ORS 810.200.

“Devices that are powered exclusively by human power” (except bicycles) are “not subject” to provisions of the vehicle code “relating to vehicles.”

- (3) Persons, motor vehicles and equipment described in subsections (1) and (2) of this section are exempt from provisions of the vehicle code relating to rules of the road as described in ORS chapter 811, except that this subsection does not apply to:
 - (a) Reckless driving, as defined in ORS 811.140.
 - (b) Driving while under the influence of intoxicants, as defined in ORS 813.010.
 - (c) Failure to perform the duties of a driver involved in an accident or collision, as described in ORS 811.700 or 811.705.
 - (d) Criminal driving while suspended or revoked, as defined in ORS 811.182.
 - (e) Fleeing or attempting to elude a police officer, as defined in ORS 811.540.
 - (f) The provisions of ORS 811.145, 811.155, 811.170 and 811.175.
- (4) Motor vehicles and equipment being used in the area and in the manner described in subsection (2) of this section are also exempt from the provisions of the vehicle code relating to vehicle size and weight to the extent set out in the governmental agency contract.
- (5) Devices moved exclusively on stationary rail tracks are exempt from the vehicle code.
- (6) Devices that are powered exclusively by human power are not subject to those provisions of the vehicle code that relate to vehicles. Notwithstanding this subsection, bicycles are generally subject to the vehicle code as provided under ORS 814.400.
- (7) The exemptions in subsection (3) of this section do not apply to the persons and vehicles when traveling to or from the facilities or construction project. [1989 c.400 §2 (enacted in lieu of 801.025); 1999 c.1051 §82]

801.045 Permissive use of private roadway.

Nothing in the provisions of the vehicle code described in this section shall prevent the owner of real property used by the public for purposes of vehicular travel by permission of the owner and not as a matter of right from prohibiting such use, or from requiring different or additional conditions than those specified or from otherwise regulating such use as may seem best to such owner. This section applies to the provisions of the vehicle code relating to abandoned vehicles, vehicle equipment, regulation of vehicle size, weight and load, the manner of operation of vehicles and use of roads by persons, animals and vehicles. [1983 c.338 §9]

Private property users who allow pedestrian use on their land can set their own rules for use by the public.

801.220 “Crosswalk.”

“Crosswalk” means any portion of a roadway at an intersection or elsewhere that is distinctly indicated for pedestrian crossing by lines or other markings on the surface of the roadway that conform in design to the standards established for crosswalks under ORS 810.200. Whenever marked crosswalks have been indicated, such crosswalks and no other shall be deemed lawful across such roadway at that intersection. Where no marked crosswalk exists, a crosswalk is that portion of the roadway described in the following:

- (1) Where sidewalks, shoulders or a combination thereof exists, a crosswalk is the portion of a roadway at an intersection, not more than 20 feet in width as measured from the prolongation of the lateral line of the roadway toward the prolongation of the adjacent property line, that is included within:
 - (a) The connections of the lateral lines of the sidewalks, shoulders or a combination thereof on opposite sides of the street or highway measured from the curbs or, in the absence of curbs, from the edges of the traveled roadway; or
 - (b) The prolongation of the lateral lines of a sidewalk, shoulder or both, to the sidewalk or shoulder on the opposite side of the street, if the prolongation would meet such sidewalk or shoulder.
- (2) If there is neither sidewalk nor shoulder, a crosswalk is the portion of the roadway at an intersection, measuring not less than six feet in width, that would be included within the prolongation of the lateral lines of the sidewalk, shoulder or both on the opposite side of the street or highway if there were a sidewalk. [1983 c.338 §36]

“Crosswalk” includes both marked AND UNMARKED connections for pedestrian use. The definition is quite expansive and technical. Just because you can’t see it doesn’t mean it’s not there. This area, no wider than 20 feet or narrower than six feet, may be trapezoidal in shape to adjust to mismatched entry points. The Oregon crosswalk is the pedestrian’s safe zone containing a right of way superior to vehicles.

801.305 “Highway.”

- (1) “Highway” means every public way, road, street, thoroughfare and place, including bridges, viaducts and other structures within the boundaries of this state, open, used or intended for use of the general public for vehicles or vehicular traffic as a matter of right.
- (2) For the purpose of enforcing traffic offenses contained in the Oregon Vehicle Code, except for ORS 810.230, “highway” includes premises open to the public that are owned by a homeowners association and whose boundaries are contained within a service district established on or before July 1, 2002, under ORS 451.410 to 451.610. [1983 c.338 §51; 2007 c.561 §1]

801.320 “Intersection.”

“Intersection” means the area of a roadway created when two or more roadways join together at any angle, as described in one of the following:

- (1) If the roadways have curbs, the intersection is the area embraced within the prolongation or connection of the lateral curb lines.

- (2) If the roadways do not have curbs, the intersection is the area embraced within the prolongation or connection of the lateral boundary lines of the roadways.
- (3) The junction of an alley with a roadway does not constitute an intersection.
- (4) Where a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of the divided highway by an intersection highway is a separate intersection. In the event the intersection highway also includes two roadways 30 feet or more apart, then every crossing of two roadways of such highways is a separate intersection. [1983 c.338 §53]

The Oregon Vehicle Code definition of "pedestrian" is arguably narrower than the PIP definition in ORS 742.520 (see Insurance section) but still includes most of the same applications. The reason for the difference is probably that the PIP statute does not separately define "bicycle" or "bicyclist".

801.385 "Pedestrian."

"Pedestrian" means any person afoot or confined in a wheelchair. [1983 c.338 §69]

801.440 "Right of way."

"Right of way" means the right of one vehicle or pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian approaching under such circumstances of direction, speed and proximity as to give rise to danger of collision unless one grants precedence to the other. [1983 c.338 §81]

In Oregon, "right of way" means just what a layperson would expect.

801.480 "Shoulder."

"Shoulder" means the portion of a highway, whether paved or unpaved, contiguous to the roadway that is primarily for use by pedestrians, for the accommodation of stopped vehicles, for emergency use and for lateral support of base and surface courses. [1983 c.338 §88]

801.485 "Sidewalk."

"Sidewalk" means the area determined as follows:

- (1) On the side of a highway which has a shoulder, a sidewalk is that portion of the highway between the outside lateral line of the shoulder and the adjacent property line capable of being used by a pedestrian.
- (2) On the side of a highway which has no shoulder, a sidewalk is that portion of the highway between the lateral line of the roadway and the adjacent property line capable of being used by a pedestrian. [1983 c.338 §89]

The definition of "sidewalk" is so broad because it encompasses areas "capable of being used by a pedestrian"; the common city paved walkway is only a small part of the scope of the term, such as rural dirt paths, gravel trails and boardwalks.

810.020 Regulating use of throughway.

- (1) Each road authority may prohibit or restrict the use of a throughway in its jurisdiction by any of the following:
 - (a) Parades.
 - (b) Bicycles or other nonmotorized traffic.
 - (c) Motorcycles or mopeds.
- (2) Regulation under this section becomes effective when appropriate signs giving notice of the regulation are erected upon a throughway and the approaches to the throughway.
- (3) Penalties for violation of restrictions or prohibitions imposed under this section are provided under ORS 811.445.
- (4) The Oregon Transportation Commission shall act as road authority under this section in lieu of the Department of Transportation. [1983 c.338 §146]

This statute provides authority to governments to regulate and restrict pedestrian activities “on a throughway in its jurisdiction” but must bow to the Oregon Constitution Article I Sec. 8 requirement for individual freedom of expression.

The concept of “due care” applies to all road users and in jury trials is explained to the jury by the judge in a jury instruction. Recognize that what one person considers is “due care” may look like madness to someone else (such as jogging on the shoulder of a busy highway); think about how it might look to others before you take a risk that may come back to haunt you later.

811.005 Duty to exercise due care.

None of the provisions of the vehicle code relieve a pedestrian from the duty to exercise due care or relieve a driver from the duty to exercise due care concerning pedestrians. [1983 c.338 §543]

811.015 Failure to obey traffic patrol member; penalty.

- (1) The driver of a vehicle commits the offense of failure to obey a traffic patrol member if:
 - (a) A traffic patrol member makes a cautionary sign or signal to indicate that students have entered or are about to enter the crosswalk under the traffic patrol member’s direction; and
 - (b) The driver does not stop and remain stopped for students who are in or entering the crosswalk from either direction on the street on which the driver is operating.
- (2) Traffic patrol members described in this section are those provided under ORS 339.650 to 339.665.
- (3) The offense described in this section, failure to obey a traffic patrol member, is a Class A traffic violation. [1983 c.338 §545; 1995 c.383 §12; 2003 c.278 §2]

The “cautionary sign or signal” that students are about to enter or have entered the crosswalk triggers the driver’s duty to stop for the traffic patrol member.

811.020 Passing stopped vehicle at crosswalk; penalty.

- (1) The driver of a vehicle commits the offense of passing a stopped vehicle at a crosswalk if the driver:
 - (a) Approaches from the rear another vehicle that is stopped at a marked or an unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway; and
 - (b) Overtakes and passes the stopped vehicle.
- (2) The offense described in this section, passing a stopped vehicle at a crosswalk, is a Class B traffic violation. [1983 c.338 §546]

This important law applies to all vehicles (including bicycles) and is frequently violated by overtaking traffic.

811.025 Failure to yield to pedestrian on sidewalk; penalty.

- (1) The driver of a vehicle commits the offense of failure to yield to a pedestrian on a sidewalk if the driver does not yield the right of way to any pedestrian on a sidewalk.
- (2) The offense described in this section, failure to yield to a pedestrian on a sidewalk, is a Class B traffic violation. [1983 c.338 §547; 1995 c.383 §42]

No ifs ands or buts, pedestrians always have the right of way on sidewalks.

811.028 Failure to stop and remain stopped for pedestrian; penalty.

- (1) The driver of a vehicle commits the offense of failure to stop and remain stopped for a pedestrian if the driver does not stop and remain stopped for a pedestrian when the pedestrian is:
 - (a) Proceeding in accordance with a traffic control device as provided under ORS 814.010 or crossing the roadway in a crosswalk, as defined in ORS 801.220; and
 - (b) In any of the following locations:
 - (A) In the lane in which the driver’s vehicle is traveling;
 - (B) In a lane adjacent to the lane in which the driver’s vehicle is traveling;
 - (c) In the lane into which the driver’s vehicle is turning;
 - (d) In a lane adjacent to the lane into which the driver’s vehicle is turning, if the driver is making a turn at an intersection that does not have a traffic control device under which a pedestrian may proceed as provided under ORS 814.010; or

Effective 1/1/2006, this statute increased the minimum space required by law for pedestrians in crosswalks. Unfortunately, when a pedestrian is wanting to cross in a crosswalk without a walk/don't walk signal the pedestrian must still enter the crosswalk to trigger the right of way, a dangerous and confusing requirement because the only way to tell if vehicles are going to stop is to enter the roadway. Note that ORS 814.040 prohibits the pedestrian from “suddenly” moving from a “place of safety” “into the path of a vehicle that is so close as to constitute an immediate hazard,” a legal opening for drivers to argue after a collision that there was no room to stop.

- (e) Less than six feet from the lane into which the driver's vehicle is turning, if the driver is making a turn at an intersection that has a traffic control device under which a pedestrian may proceed as provided under ORS 814.010.
- (2) For the purpose of this section, a bicycle lane or the part of a roadway where a vehicle stops, stands or parks that is adjacent to a lane of travel is considered to be part of that adjacent lane of travel.
- (3) This section does not require a driver to stop and remain stopped for a pedestrian under any of the following circumstances:
- (a) Upon a roadway with a safety island, if the driver is proceeding along the half of the roadway on the far side of the safety island from the pedestrian; or
- (b) Where a pedestrian tunnel or overhead crossing has been provided at or near a crosswalk.
- (4) The offense described in this section, failure to stop and remain stopped for a pedestrian, is a Class B traffic violation. [2005 c.746 §2] Note: 811.028 was added to and made a part of the Oregon Vehicle Code by legislative action but was not added to ORS chapter 811 or any series therein. See Preface to Oregon Revised Statutes for further explanation.

811.035 Failure to stop and remain stopped for blind pedestrian; penalty.

- (1) The driver of a vehicle commits the offense of failure to stop and remain stopped for a blind pedestrian if the driver violates any of the following:
- (a) A driver approaching a blind or blind and deaf pedestrian carrying a white cane or accompanied by a dog guide, who is crossing or about to cross a roadway, shall stop and remain stopped until the pedestrian has crossed the roadway.
- (b) Where the movement of vehicular traffic is regulated by traffic control devices, a driver approaching a blind or blind and deaf pedestrian shall stop and remain stopped until the pedestrian has vacated the roadway if the blind or blind and deaf pedestrian has entered the roadway and is carrying a white cane or is accompanied by a dog guide. This paragraph applies notwithstanding any other provisions of the vehicle code relating to traffic control devices.

ORS 811.028 changes 65 years of Oregon law to provide greater protection to pedestrians in crosswalks. In 1941 the Oregon legislature shrunk the original pedestrian crosswalk right of way from across the entire roadway to include only the lane of travel unless the pedestrian is "so close [to the lane of vehicular travel] as to be in danger".

The present statute requires: Vehicles must stop and remain stopped for pedestrians in a marked or unmarked crosswalk in the vehicle's lane of travel or intended lane of travel after a turn, AND in the adjacent lane. BUT if there is a traffic signal at the intersection, THEN the vehicle must only stop and wait while the pedestrian is in the occupied lane and another six feet of the adjacent lane.

This statute may contain a legislative punctuation mistake from when it was amended in 2005. The literal meaning of the statute as it is presently punctuated seems to provide that even if a pedestrian is crossing unlawfully against a "don't walk" in a crosswalk all approaching drivers must still stop and remain stopped or face a traffic violation. While jaywalking pedestrians may be ticketed for violation of ORS 814.020 (Failure to Obey Traffic Control Device), drivers must still yield and stop the same as if the pedestrians were crossing lawfully.

- (2) This section is subject to the provisions and definitions relating to the rights of pedestrians who are blind or blind and deaf under ORS 814.110.
- (3) The offense described in this section, failure to stop and remain stopped for a blind pedestrian, is a Class B traffic violation. [1983 c.338 §549; 1985 c.16 §280; 2003 c.278 §3]

The special status of the blind or deaf pedestrian with a dog or white cane requires vehicles to stop until the person clears the roadway.

811.060 Vehicular assault of bicyclist or pedestrian; penalty.

- (1) For the purposes of this section, “recklessly” has the meaning given that term in ORS 161.085.(2) A person commits the offense of vehicular assault of a bicyclist or pedestrian if:
 - (a) The person recklessly operates a vehicle upon a highway in a manner that results in contact between the person’s vehicle and a bicycle operated by a person, a person operating a bicycle or a pedestrian; and
 - (b) The contact causes physical injury to the person operating a bicycle or the pedestrian.
- (3) The offense described in this section, vehicular assault of a bicyclist or pedestrian, is a Class A misdemeanor. [2001 c.635 §5]

This law was passed in 2001 with the good intention of raising consciousness on behalf of bicyclists and pedestrians but merely prohibits behaviors already illegal under Oregon’s other criminal statutes.

811.165 Failure to stop for passenger loading of public transit vehicle; penalty.

- (1) A person commits the offense of failure to stop for passenger loading of a public transit vehicle if the person is the driver of a vehicle overtaking a public transit vehicle described in this section that is stopped or about to stop for the purpose of receiving or discharging any passenger and the person does not:
 - (a) Stop the overtaking vehicle to the rear of the nearest running board or door of the public transit vehicle; and
 - (b) Keep the vehicle stationary until all passengers have boarded or alighted therefrom and reached a place of safety.
- (2) This section applies to the following public transit vehicles:
 - (a) Commercial buses; and
 - (b) Rail fixed guideway system vehicles.
- (3) A person is not in violation of this section if the person passes a public transit vehicle:
 - (a) Upon the left of any public transit vehicle described in this section on a one-way street; or
 - (b) At a speed not greater than is reasonable and proper and with due caution for the safety of pedestrians when:

- (A) The public transit vehicle has stopped at the curb; or
 - (B) Any area or space has been officially set apart within the roadway for the exclusive use of pedestrians and the area or space is so protected or marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.
- (4) The offense described in this section, failure to stop for passenger loading of public transit vehicle, is a Class B traffic violation. [1983 c.338 §586; 1985 c.16 §292; 1995 c.383 §49; 2001 c.522 §4]

811.233 Failure to yield right of way to highway worker; penalty.

- (1) A person commits the offense of failure to yield the right of way to a highway worker who is a pedestrian if the person is operating a motor vehicle in a highway work zone and does not yield the right of way to a highway worker who is a pedestrian.
- (2) The provisions of ORS 814.040 and 814.070 regarding pedestrians do not apply to pedestrians described in subsection (1) of this section.
- (3) The offense described in this section, failure to yield the right of way to a highway worker who is a pedestrian, is a Class B traffic violation. [1997 c.843 §2]

Ray Thomas helped form a citizen safety coalition to draft and pass this law in 1997 in order to make Oregon's roads safer for highway workers after an insurance company said the existing law required an ODOT highway worker to yield to an approaching vehicle even though he was in the act of removing a hazard posed by a large block of oak in the slow lane of Southbound I-5.

811.490 Improper opening or leaving open of vehicle door; penalty.

- (1) A person commits the offense of improper opening or leaving open a vehicle door if the person does any of the following:
 - (a) Opens any door of a vehicle unless and until it is reasonably safe to do so and it can be done without interference with the movement of traffic, or with pedestrians and bicycles on sidewalks or shoulders.
 - (b) Leaves a door open on the side of a vehicle available to traffic, or to pedestrians or bicycles on sidewalks or shoulders for a period of time longer than necessary to load or unload passengers.
- (2) The offense described in this section, improper opening or leaving open a vehicle door, is a Class D traffic violation. [1983 c.338 §655; 1985 c.16 §320]

While being "doored" is more of a danger for bicyclists than pedestrians, it is still good to know that those wildly swinging car doors are not allowed to interfere with the "movement" of pedestrians.

811.505 Failure to stop when emerging from alley, driveway or building; penalty.

(1) A person commits the offense of failure to stop when emerging from an alley, driveway or building if the person is operating a vehicle that is emerging from an alley, building, private road or driveway in a business or residence district and the person does not stop the vehicle as follows:

Vehicle operators must stop when emerging from a building, alley or driveway before crossing sidewalk.

- (a) If there is a sidewalk or sidewalk area, the person must stop the vehicle before driving onto the sidewalk or sidewalk area.
- (b) If there is no sidewalk or sidewalk area, the person must stop at the point nearest the roadway to be entered where the driver has a view of approaching traffic.

(2) The offense described in this section, failure to stop when emerging from an alley, driveway or building, is a Class B traffic violation. [1983 c.338 §658; 1985 c.16 §322; 1995 c.383 §78]

811.510 Dangerous operation around livestock; penalty.

(1) A person commits the offense of dangerous operation around livestock if the person is operating a vehicle upon a highway and the person fails to do any of the following:

Operators of vehicles on the highway must yield to and use caution when approaching a person with livestock and if given a raised hand distress signal must stop and turn off the engine.

- (a) A driver shall use caution when approaching or passing a person riding, leading or herding livestock on the highway.
- (b) If a person riding or leading livestock upon a highway gives a distress signal to an approaching driver by raising a hand, the driver must promptly stop the driver's vehicle, unless movement forward is necessary to avoid an accident, and, if requested, shall turn off the engine until the livestock is under control.
- (c) A driver shall yield the right of way to livestock being driven on a highway.

(2) This section is only applicable if the livestock is an animal of the species of horses, mules, donkeys, cattle, swine, sheep or goats.

(3) The offense described in this section, dangerous operation around livestock, is a Class B traffic violation. [1983 c.338 §666]

811.550 Places where stopping, standing and parking prohibited.

This section establishes places where stopping, standing and parking a vehicle are prohibited for purposes of the penalties under ORS 811.555. Except as provided under an exemption in ORS 811.560, a person is in violation of ORS 811.555 if a person parks, stops or leaves standing a vehicle in any of the following places:

Parked vehicles may be a safety hazard to pedestrians. It is illegal to park:

- (1) Upon a roadway outside a business district or residence district, whether attended or unattended, when it is practicable to stop, park or leave the vehicle standing off the roadway. Exemptions under ORS 811.560 (1), (7) and (9) are applicable to this subsection.
- (2) On a shoulder, whether attended or unattended, unless a clear and unobstructed width of the roadway opposite the standing vehicle is left for the passage of other vehicles and the standing vehicle is visible from a distance of 200 feet in each direction upon the roadway or the person, at least 200 feet in each direction upon the roadway, warns approaching motorists of the standing vehicle by use of flaggers, flags, signs or other signals. Exemptions under ORS 811.560 (9) are applicable to this subsection.
- (3) On the roadway side of a vehicle stopped or parked at the edge or curb of a highway. Exemptions under ORS 811.560 (7) are applicable to this subsection.
- (4) On a sidewalk. Exemptions under ORS 811.560 (4) to (7) are applicable to this subsection.
- (5) Within an intersection. Exemptions under ORS 811.560 (4) to (7) are applicable to this subsection.
- (6) On a crosswalk. Exemptions under ORS 811.560 (4) to (7) are applicable to this subsection.
- (7) Between a safety zone and the adjacent curb or within 30 feet of points on the curb immediately opposite the ends of a safety zone, unless a different length is indicated by signs and markings. For purposes of this subsection the safety zone must be an area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone. Exemptions under ORS 811.560 (4) to (7) are applicable to this subsection.
- (8) Alongside or opposite a street excavation or obstruction when stopping, standing or parking would obstruct traffic. Exemptions under ORS 811.560 (4) to (7) are applicable to this subsection.
- (9) Upon a bridge or other elevated structure upon a highway. Exemptions under ORS 811.560 (4) to (8) are applicable to this subsection.
- (10) Within a highway tunnel. Exemptions under ORS 811.560 (4) to (7) are applicable to this subsection.

...on a roadway when it is practicable to park off the road;
 ...on a shoulder without 200 feet of visibility;

...on a sidewalk unless necessary to avoid conflict with other traffic, when the vehicle is disabled, or for official repair or law enforcement purposes;
 ...within an intersection unless necessary to avoid conflict with other traffic, when the vehicle is disabled, or for official repair or law enforcement purposes;

...on a crosswalk unless necessary to avoid conflict with other traffic, when the vehicle is disabled, or for official repair or law enforcement purposes;
 ...between a safety zone and the adjacent curb unless necessary to avoid conflict with other traffic, when the vehicle is disabled, or for official repair or law enforcement purposes;

- (11) On any railroad or rail fixed guideway system tracks or within seven and one-half feet of the nearest rail at a time when the parking of vehicles would conflict with operations or repair of the tracks. Exemptions under ORS 811.560(4) to (7) are applicable to this subsection.
- (12) On a throughway. Exemptions under ORS 811.560(4) to (7) are applicable to this subsection.
- (13) In the area between roadways of a divided highway, including crossovers. Exemptions under ORS 811.560 (4) to (7) are applicable to this subsection.
- (14) At any place where traffic control devices prohibit stopping. Exemptions under ORS 811.560 (4) to (7) are applicable to this subsection.
- (15) In front of a public or private driveway. Exemptions under ORS 811.560 (2) and (4) to (7) are applicable to this subsection.
- (16) Within 10 feet of a fire hydrant. Exemptions under ORS 811.560 (2) and (4) to (7) are applicable to this subsection.
- (17) Within 20 feet of a crosswalk at an intersection. Exemptions under ORS 811.560 (2) and (4) to (7) are applicable to this subsection.
- (18) Within 50 feet upon the approach to an official flashing signal, stop sign, yield sign or traffic control device located at the side of the roadway if the standing or parking of a vehicle will obstruct the view of any traffic control device located at the side of the roadway. Exemptions under ORS 811.560 (2) and (4) to (7) are applicable to this subsection.
- (19) Within 15 feet of the driveway entrance to a fire station and on the side of a street opposite the entrance to a fire station, within 75 feet of the entrance. Exemptions under ORS 811.560 (2) and (4) to are applicable to this subsection.
- (20) At any place where traffic control devices prohibit standing. Exemptions under ORS 811.560 (2) and (4) to (7) are applicable to this subsection.
- (21) Within 50 feet of the nearest rail of a railroad or rail fixed guideway system crossing. Exemptions under ORS 811.560 (3) to (7) are applicable to this subsection.
- (22) At any place where traffic control devices prohibit parking. Exemptions under ORS 811.560 (3) to (7) are applicable to this subsection.
- (23) On a bicycle lane. Exemptions under ORS 811.560 are applicable to this subsection.
- (24) On a bicycle path. Exemptions under ORS 811.560 are applicable to this subsection. [1983 c.338 §669; 1985 c.21 §1; 1985 c.334 §1; 1989 c.433 §2; 1997 c.249 §234; 2001 c.522 §9]

...within 20 feet of a crosswalk unless “momentarily” and actually loading property or passengers, or necessary to avoid conflict with other traffic, when the vehicle is disabled, or for official repair or law enforcement purposes.

811.555 Illegal stopping, standing or parking; affirmative defense; penalty.

- (1) A person commits the offense of illegal stopping, standing or parking if:
 - (a) The person stops, parks or leaves standing a vehicle in a place where such stopping, parking or standing is prohibited under ORS 811.550; or
 - (b) The person is the owner of an unattended vehicle parked in a place where such parking is prohibited under ORS 811.550.
- (2) Exemptions from this section are established under ORS 811.560.
- (3) A police officer, under authority granted by ORS 810.430, may move or require to be moved a vehicle that is stopped, parked or left standing in violation of this section.
- (4) It is an affirmative defense to a prosecution of the owner of a vehicle under subsection (1)(b) of this section that the use of the vehicle was not authorized by the owner, either expressly or by implication.
- (5) The offense described by this section, illegal stopping, standing or parking, is a Class D traffic violation. [1983 c.338 §668; 1987 c.687 §4]

811.560 Exemptions from prohibitions on stopping, standing and parking.

This section provides exemptions from ORS 811.550 and 811.555. The following exemptions are applicable as provided under ORS 811.550:

- (1) When applicable, this subsection exempts school buses or worker transport buses stopped on a roadway to load or unload workers or children, providing that the flashing school bus safety lights on the bus are operating.
- (2) When applicable, this subsection exempts vehicles stopped, standing or parked momentarily to pick up or discharge a passenger.
- (3) When applicable, this subsection exempts vehicles stopped, standing or parked momentarily for the purpose of and while actually engaged in loading or unloading property or passengers.
- (4) When applicable, this subsection exempts vehicles owned or operated by the state, a county or city when stopping, standing or parking is necessary to perform maintenance or repair work on the roadway.
- (5) When applicable, this subsection exempts vehicles from the prohibitions and penalties when the driver's disregard of the prohibitions is necessary to avoid conflict with other traffic.
- (6) When applicable, this subsection exempts vehicles acting in compliance with law or at the direction of a police officer or a traffic control device.
- (7) When applicable, this subsection exempts the driver of a vehicle that is disabled in such manner and to such extent that the driver cannot avoid stopping or temporarily leaving the disabled vehicle in a prohibited position.

Motor vehicles parked on sidewalks or crosswalks or intersections are a safety hazard to pedestrians. Exceptions to the prohibition are contained in ORS 811.560(4) to (7) when it is necessary to "avoid conflict with other traffic", when the vehicle is disabled, or for official repair or law enforcement purposes.

Note that ORS 811.560(3) provides no legal excuse to motorists who park on a sidewalk or crosswalk in order to unload or load passengers or cargo, even if it is "momentary."

- (8) When applicable, this subsection exempts vehicles owned or operated by the State Department of Fish and Wildlife when stopping, standing or parking is necessary to enable employees to release fish.
- (9) When applicable, this subsection exempts vehicles momentarily stopped to allow oncoming traffic to pass before making a right-hand or left-hand turn or momentarily stopped in preparation for or while negotiating an exit from the road. [1983 c.338 §670; 1985 c.334 §2; 1989 c.433 §3]

814.010 Appropriate responses to traffic control devices.

This section establishes appropriate pedestrian responses to specific traffic control devices for purposes of ORS 814.020. Authority to place traffic control devices is established under ORS 810.210. Except when acting under the direction of a police officer, a pedestrian is in violation of ORS 814.020 if the pedestrian makes a response to a traffic control device that is not permitted under the following:

No mysteries here – don’t walk when it says “Don’t Walk” and don’t walk on a yellow or red light. This statute is the legal authority for pedestrian traffic controls.

- (1) A pedestrian facing a traffic control device with a green light may proceed across the roadway within any marked or unmarked crosswalk unless prohibited from doing so by other traffic control devices.
- (2) A pedestrian facing a traffic control device with a green arrow signal light may proceed across the roadway within any marked or unmarked crosswalk unless prohibited from doing so by other traffic control devices.
- (3) A pedestrian facing a traffic control device with a steady yellow light shall not enter the roadway unless otherwise directed by a pedestrian control signal.
- (4) A pedestrian facing a traffic control device with a steady red light shall not enter the roadway unless otherwise directed by a pedestrian control signal.
- (5) If a traffic control device is erected and maintained at a place other than an intersection, the provisions of this section are applicable.
- (6) When a pedestrian control signal showing the words “Walk” and “Wait” or “Don’t Walk” or any other pedestrian symbol approved by the Oregon Transportation Commission under ORS 810.200 and 810.210 for the purpose of controlling pedestrian crossing is in place, the signal indicates and applies as follows:
 - (a) If a pedestrian is facing a “Walk” signal or other symbol approved under ORS 810.200 and 810.210 indicating that the pedestrian may proceed, the pedestrian may proceed across the roadway in the direction of the signal.
 - (b) A pedestrian shall not start to cross the roadway in the direction of a signal showing a “Wait” or “Don’t Walk” or any other symbol approved under ORS 810.200 and 810.210 indicating that the pedestrian may not proceed. A pedestrian who has started crossing a roadway on a signal showing “Walk” or any other approved symbol to proceed shall proceed with dispatch to a sidewalk or safety island while a signal is showing “Wait” or “Don’t Walk” or any other approved symbol indicating not to proceed. [1983 c.338 §553; 1985 c.16 §282]

814.020 Failure to obey traffic control device; penalty.

- (1) A pedestrian commits the offense of pedestrian failure to obey traffic control devices if the pedestrian does any of the following:
 - (a) Fails to obey any traffic control device specifically applicable to the pedestrian.
 - (b) Fails to obey any specific traffic control device described in ORS 814.010 in the manner required by that section.
- (2) A pedestrian is not subject to the requirements of this section if the pedestrian complies with directions of a police officer.
- (3) The offense described in this section, pedestrian failure to obey traffic control devices, is a Class D traffic violation. [1983 c.338 §552; 1995 c.383 §82]

A Class D violation = maximum \$90 fine.

814.030 Failure to obey bridge or railroad signal; penalty.

- (1) A pedestrian commits the offense of pedestrian failure to obey bridge or railroad signal if the pedestrian does any of the following:
 - (a) Enters or remains upon a bridge or approach to a bridge beyond the bridge signal, gate or barricade after a bridge operation signal has been given.
 - (b) Passes through, around, over or under any crossing gate or barrier at a bridge or railroad grade crossing while the gate or barrier is closed or being opened or closed.
- (2) The offense described in this section, pedestrian failure to obey bridge or railroad signal, is a Class D traffic violation. [1983 c.338 §554; 1995 c.383 §83]

This statute provides legal authority for bridge and rail signals.

Oregon law requires pedestrians to yield to vehicles on the roadway unless the pedestrian is in a crosswalk and even then the pedestrian must not “suddenly leave the curb or other place of safety” and move into the path of a vehicle that is “so close as to constitute an immediate hazard”—a trap for the unwary. Even if the pedestrian is lawfully crossing in a crosswalk a driver can argue that the pedestrian moved suddenly into the vehicle’s path of travel.

814.040 Failure to yield to vehicle; penalty.

- (1) A pedestrian commits the offense of pedestrian failure to yield to a vehicle if the pedestrian does any of the following:
 - (a) Suddenly leaves a curb or other place of safety and moves into the path of a vehicle that is so close as to constitute an immediate hazard.
 - (b) Fails to yield the right of way to a vehicle upon a roadway when the pedestrian is crossing the roadway at any point other than within a marked crosswalk or an unmarked crosswalk at an intersection.
 - (c) Except as otherwise provided under the vehicle code, fails to yield the right of way to all vehicles upon the roadway.

Oregon law should be reformed to include a way for pedestrians to signal approaching cars to stop BEFORE the pedestrian enters the crosswalk into the vehicle’s path of travel. Norway has used an upraised pedestrian hand signal to cause cars to stop and has one of the lowest rates of pedestrian injuries in the world, an excellent technique, easy to teach, use and enforce.

- (2) The offense described in this section, pedestrian failure to yield to a vehicle, is a Class D traffic violation. [1983 c.338 §555; 1995 c.383 §84]

814.050 Failure to yield to ambulance or emergency vehicle; penalty.

- (1) A pedestrian commits the offense of pedestrian failure to yield to an ambulance or emergency vehicle if the pedestrian does not yield the right of way to:
 - (a) An ambulance used in an emergency situation; or
 - (b) An emergency vehicle or an ambulance upon the approach of the vehicle using a visual signal or audible signal or both according to requirements under ORS 820.300 or 820.320.
- (2) This section does not relieve the driver of an ambulance or emergency vehicle from the duty to:
 - (a) Drive with due regard for the safety of all persons using the highway; and
 - (b) Exercise due care to avoid colliding with any pedestrian.
- (3) The offense described in this section, pedestrian failure to yield to an ambulance or emergency vehicle, is a Class D traffic violation. [1983 c.338 §556; 1995 c.209 §4; 1995 c.383 §85]

814.060 Failure to use pedestrian tunnel or overhead crossing; penalty.

- (1) A pedestrian commits the offense of failure to use pedestrian tunnel or overhead crossing if the pedestrian crosses a roadway other than by means of a pedestrian tunnel or overhead pedestrian crossing when a tunnel or overhead crossing serves the place where the pedestrian is crossing the roadway.
- (2) The offense described in this section, failure to use pedestrian tunnel or overhead crossing, is a Class D traffic violation. [1983 c.338 §557]

814.070 Improper position upon or improperly proceeding along highway; penalty.

- (1) A pedestrian commits the offense of pedestrian with improper position upon or improperly proceeding along a highway if the pedestrian does any of the following:
 - (a) Takes a position upon or proceeds along and upon the roadway where there is an adjacent usable sidewalk or shoulder.
 - (b) Does not take a position upon or proceed along and upon the shoulder, as far as practicable from the roadway edge, on a highway that has an adjacent shoulder area on one or both sides.

When on or near highways, pedestrians are required to:

- use an adjacent usable sidewalk or shoulder,
- and stay on the shoulder “as far as practicable from the roadway edge”
- and stay on the left side of a two way roadway – or on the right side shoulder on a divided highway
- AND, where there is no sidewalk or shoulder available, as near as practicable to an outside edge of the roadway, and again, always on the left side on a two lane roadway.

- (c) Except in the case of the divided highway, does not take a position upon or proceed along and upon the left shoulder and as far as practicable from the roadway edge on a two-way highway that has no sidewalk and that does have an adjacent shoulder area. This paragraph does not apply to:
 - (A) A hitchhiker who takes a position upon or proceeds along and upon the right shoulder so long as the hitchhiker does so facing the vehicles using the adjacent lane of the roadway; or
 - (B) A member of a group that has adopted that section of highway under the provisions of ORS 366.158 and who is obeying the rules of the Department of Transportation for picking up litter on either side of the roadway.
 - (d) Does not take a position upon or proceed along and upon the right highway shoulder, as far as practicable from the roadway edge, on a divided highway that has no sidewalk and does have a shoulder area. This paragraph does not apply to a member of a group that has adopted that section of highway under the provisions of ORS 366.158 and who is obeying the rules of the Department of Transportation for picking up litter on either side of the roadway.
 - (e) Fails to take a position upon or proceed along and upon a highway that has neither sidewalk nor shoulder available, as near as practicable to an outside edge of the roadway, and, if the roadway is a two-way roadway, only on the left side of it.
- (2) This section is subject to the provisions of ORS 814.100.
- (3) The offense described in this section, pedestrian with improper position upon or improperly proceeding along a highway, is a Class D traffic violation. [1983 c.338 §558; 1991 c.486 §4; 1995 c.383 §86]

814.080 Unlawful hitchhiking; penalty.

- (1) A person commits the offense of unlawful hitchhiking if the person is on a roadway for the purpose of soliciting a ride.
- (2) The offense described in this section, unlawful hitchhiking, is a Class D traffic violation. [1983 c.338 §559; 1995 c.383 §87]

814.100 Rights of driver and passengers of disabled vehicle on freeway.

On a freeway on which pedestrian traffic is prohibited, the driver and passengers of a disabled vehicle stopped on the freeway may walk to the nearest exit, in either direction, on that side of the freeway upon which the vehicle is disabled, from which telephone or motor vehicle repair services are available. [1983 c.338 §561]

814.110 Rights for blind or blind and deaf pedestrians.

- (1) This section establishes rights for pedestrians who are blind or blind and deaf. The rights established by this section are enforced by ORS 811.035 and 814.120. The following definitions apply to this section and to ORS 811.035 and 814.120:
 - (a) "Blind person" means a person who has 20/200 vision or less, or a visual field of 20 degrees or less.
 - (b) "Dog guide" means a dog that is wearing a dog guide harness and is trained to lead or guide a blind person.
 - (c) "White cane" means a cane or walking stick that is white in color or white with a red tip.
- (2) This section and ORS 811.035 and 814.120 grant and enforce the following rights for pedestrians who are blind or blind and deaf:
 - (a) A blind or blind and deaf person may carry and use a white cane on the highways and other public places of this state for the purposes of identification and mobility.
 - (b) Any blind person who is deaf may use a white cane marked by a six-inch wide chartreuse colored strip at the tip end.
- (3) A blind or blind and deaf pedestrian who is not carrying a white cane or not accompanied by a dog guide has all the rights and privileges granted by law to all pedestrians. [1985 c.16 §284]

814.150 Failure to perform duties of person in charge of livestock on highway; penalty.

- (1) A person commits the offense of failure to perform the duties of a person in charge of livestock on a highway if the person fails to do any of the following:
 - (a) When riding or leading a horse or other livestock on the highway, a person must keep a lookout for vehicles and use caution to keep the animal under control.
 - (b) A person in charge of driving a herd of livestock on or across a highway shall position a person at the front of the herd to warn drivers that the herd is approaching.
 - (c) A person in charge of livestock being driven on a highway shall use reasonable care and diligence to open the roadway for vehicular traffic.
 - (d) If a horse or other livestock becomes frightened on a highway, the person riding or leading the livestock shall give a distress signal to an approaching driver by raising the person's hand.
- (2) This section is only applicable if the livestock is an animal of the species of horses, mules, donkeys, cattle, swine, sheep or goats.
- (3) The offense described in this section, failure to perform duties of a person in charge of livestock on a highway, is a Class B traffic violation. [1983 c.338 §667]

814.210 Operation of moped on sidewalk or bicycle trail; penalty.

- (1) A person commits the offense of operation of a moped on a sidewalk or bicycle trail if the person operates a moped upon a sidewalk, a bicycle path or a bicycle lane.
- (2) Exemptions to this section are provided under ORS 811.440.
- (3) The offense described in this section, operation of a moped on a sidewalk or bicycle trail, is a Class D traffic violation. [1983 c.338 §644]

814.410 Unsafe operation of bicycle on sidewalk; penalty.

- (1) A person commits the offense of unsafe operation of a bicycle on a sidewalk if the person does any of the following:
 - (a) Operates the bicycle so as to suddenly leave a curb or other place of safety and move into the path of a vehicle that is so close as to constitute an immediate hazard.
 - (b) Operates a bicycle upon a sidewalk and does not give an audible warning before overtaking and passing a pedestrian and does not yield the right of way to all pedestrians on the sidewalk.
 - (c) Operates a bicycle on a sidewalk in a careless manner that endangers or would be likely to endanger any person or property.
 - (d) Operates the bicycle at a speed greater than an ordinary walk when approaching or entering a crosswalk, approaching or crossing a driveway or crossing a curb cut or pedestrian ramp and a motor vehicle is approaching the crosswalk, driveway, curb cut or pedestrian ramp. This paragraph does not require reduced speeds for bicycles at places on sidewalks or other pedestrian ways other than places where the path for pedestrians or bicycle traffic approaches or crosses that for motor vehicle traffic.
 - (e) Operates an electric assisted bicycle on a sidewalk.
- (2) Except as otherwise specifically provided by law, a bicyclist on a sidewalk or in a crosswalk has the same rights and duties as a pedestrian on a sidewalk or in a crosswalk.
- (3) The offense described in this section, unsafe operation of a bicycle on a sidewalk, is a Class D traffic violation. [1983 c.338 §699; 1985 c.16 §337; 1997 c.400 §7; 2005 c.316 §2]

Bicycles on the sidewalk must:

- yield the right of way to pedestrians
- give an “audible warning” before passing
- not operate bicycles “in a careless manner” that would “endanger persons or property”.

Bicycles are prohibited from being ridden on many of Oregon’s city core sidewalks; see the book Pedal Power for a collection of current city ordinances.

814.524 Unsafe operation of motor assisted scooter on sidewalk; penalty.

- (1) A person commits the offense of unsafe operation of a motor assisted scooter on a sidewalk if the person operates a motor assisted scooter on a sidewalk, except to enter or leave adjacent property, or the person operates a motor assisted scooter on a sidewalk to enter or leave adjacent property and the person:
 - (a) Operates the motor assisted scooter so as to suddenly leave a curb or other place of safety and move into the path of a vehicle that is so close as to constitute an immediate hazard.
 - (b) Does not give an audible warning before overtaking and passing a pedestrian or does not yield the right of way to all pedestrians on the sidewalk.
 - (c) Operates the motor assisted scooter in a careless manner that endangers or would be likely to endanger any person or property.
 - (d) Operates the motor assisted scooter at a speed greater than an ordinary walk when approaching a crosswalk, approaching or entering a driveway or crossing a curb cut or pedestrian ramp and a motor vehicle is approaching the crosswalk, driveway, curb cut or pedestrian ramp.
- (2) The offense described in this section, unsafe operation of a motor assisted scooter on a sidewalk, is a Class D traffic violation. [2001 c.749 §11]

Motorized scooters are prohibited on sidewalks except when crossing from an adjacent property and must yield to and provide an audible warning to pedestrians when passing.

814.526 Unsafe operation of motor assisted scooter on bicycle path or lane; penalty.

- (1) A person commits the offense of unsafe operation of a motor assisted scooter on a bicycle path or bicycle lane if the person operates a motor assisted scooter on a bicycle path or bicycle lane and does not give an audible warning before overtaking and passing a pedestrian or does not yield the right of way to all pedestrians on the bicycle path or bicycle lane.
- (2) The offense described in this section, unsafe operation of a motor assisted scooter on a bicycle path or bicycle lane, is a Class D traffic violation. [2001 c.749 §12]

If a motorized scooter is lawfully operated on a bike lane or path it must yield to and provide an audible warning to pedestrians when passing.

814.550 Application of vehicle laws to electric personal assistive mobility device.

- (1) An electric personal assistive mobility device is not a motor vehicle for purposes of the Oregon Vehicle Code, except when specifically provided by statute.
- (2) A person operating an electric personal assistive mobility device on a bicycle lane, bicycle path or any part of a highway is subject to any provisions applicable to and has the same rights and duties as the driver of a bicycle when operating on a bicycle lane, bicycle path or any part of a highway, except when otherwise specifically provided by statute.

- (3) A person operating an electric personal assistive mobility device on a sidewalk is subject to any provisions applicable to and has the same rights and duties as a pedestrian on a sidewalk, except when otherwise specifically provided by statute.
- (4) Subject to the provisions of subsections (1) to (3) of this section, for purposes of the vehicle code:
 - (a) An electric personal assistive mobility device is a vehicle; and
 - (b) When the term “vehicle” is used the term shall be deemed to be applicable to electric personal assistive mobility devices, except those provisions that by their very nature can have no application to the devices.
- (5) The provisions of the vehicle code relating to the operation of an electric personal assistive mobility device do not relieve an operator or motorist from the duty to exercise due care. [2003 c.341 §11]

814.552 Unsafe operation of electric personal assistive mobility device; penalty.

- (1) A person commits the offense of unsafe operation of an electric personal assistive mobility device if:
 - (a) The person is operating an electric personal assistive mobility device on a highway that has a designated or posted speed limit greater than 35 miles per hour or that has no designated or posted speed limit, and the person is not in a bicycle lane or crossing the highway;
 - (b) The person is operating an electric personal assistive mobility device on a bicycle lane, bicycle path or any part of a highway at a speed greater than 15 miles per hour;
 - (c) The person is operating an electric personal assistive mobility device on a sidewalk in a careless manner that endangers or would be likely to endanger any person or property;
 - (d) The person is operating an electric personal assistive mobility device on a bicycle lane, bicycle path, sidewalk or other premises open to the public and the person carries another person on the electric personal assistive mobility device;
 - (e) The person is operating an electric personal assistive mobility device at a speed greater than an ordinary walk when approaching a crosswalk, approaching or entering a driveway or crossing a curb cut or pedestrian ramp and a motor vehicle is approaching the crosswalk, driveway, curb cut or pedestrian ramp; or
 - (f) The person is operating an electric personal assistive mobility device on a sidewalk and does not give an audible warning before overtaking and passing a pedestrian and does not yield the right of way to all pedestrians on the sidewalk.

The same rules apply to PMD's that apply to bicycles on the sidewalk. Strangely, while there is a 35 mph highway speed limit and a 15 mph bike lane speed limit, there is no speed limit for sidewalks.

- (2) The offense described in this section, unsafe operation of an electric personal assistive mobility device, is a Class D traffic violation. [2003 c.341 §12]

OAR 125-090-0120 Safety Rules

The following safety rules shall be observed by all users of Parking Facilities:

- (1) The Oregon Basic Rule governing the operation of motor vehicles applies to use of all vehicles in all Parking Facilities.
- (2) Pedestrians have the right-of-way.
- (3) Automobiles are to be headed into the parking space at metered parking and at diagonal parking unless parking in the area is designated otherwise.
- (4) Maximum speed shall be ten miles per hour unless a slower maximum speed is posted.
- (5) Users shall follow all directional arrows, signs and posted instructions.
- (6) The State of Oregon, Department of Administrative Services and its officers and employees are not responsible for any accident or damage to a vehicle, theft or personal injury resulting from the use of Parking Facilities.
- (7) The Department reserves the right to issue and post rules at each Parking Facility which shall govern the specific use and operation of such facility. Stat. Auth.: ORS 98.805 - ORS 98.818, ORS 184.340, ORS 276.591 - ORS 276.601 & ORS 283.100 Stats. Implemented ORS 98.805, ORS 276.591, ORS 276.594 & ORS 276.601 Hist.: DASII 1-1996, f. & cert. ef. 3-1-96

While this Oregon Administrative Rule only has the force of law in facilities administered by the State of Oregon, it provides a clear example for private owners and managers to follow and may be admissible evidence of standards and rules in a trial where a pedestrian is hurt by a speeding driver in a private parking lot. Pedestrians have the right of way and the speed limit is 10 m.p.h.

OAR 734-020-0060 Design and Construction of Bikeways

- (1) The Department of Transportation adopts by reference The American Association of State Highway and Transportation Officials, "Guide for the Development of Bicycle Facilities," (Guide), dated August, 1991, to establish bikeway design and construction standards, to establish guidelines for traffic control devices on bikeways including location and type of traffic warning signs and to recommend illumination standards, all in accordance with and pursuant to ORS 366.514, 184.616, 184.619, and 366.205.
- (2) The following constitute supplements and exceptions to the August, 1991 Edition of the "Guide for the Development of Bicycle Facilities":
 - (a) Signing and Marking:
 - (A) All bicycle signing and markings on the State Highway System or installed on local city streets or county roads under state contract or agreement shall be in conformance with the current Department of Transportation "Sign Policy and Guidelines for the State Highway System" and the "Traffic Line Manual." Any signing or markings not included in these guidelines or manual, but which is deemed necessary and required for the bicycle facility shall conform to the Manual on Uniform Traffic Control Devices as adopted by the Oregon Transportation Commission;

- (B) The standard width longitudinal painted solid line separating the motor vehicle travel way and a bike lane shall be a solid nominal eight-inch wide white stripe as required by OAR 734-020-0055; and
 - (C) The desirable width for a one-way bike lane on the State Highway System or installed on local city streets or county roads under state contract or agreement is six feet. Where six feet is not practical to achieve because of physical or economic constraints, a minimum width of four feet may be designated as a bike lane.
- (b) Definitions: For the purpose of this rule and the Guide, the definitions on pages two and three of the Guide shall control, rather than any conflicting statutory or rule definitions. Terms not defined in the Guide shall be given their ordinary every day interpretation, even if defined otherwise for use in specific chapters in the Oregon Revised Statutes.
- [Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.] Stat. Auth.: ORS 184.616, ORS 184.619, ORS 366.205 & ORS 366.514 Stats. Implemented: ORS 366.514(4) & ORS 810.200 Hist.: 1 OTC 38, f. 9-26-74, ef. 10-25-74; 2HD 7-1983, f. & ef. 2-18-83; HWY 3-1988, f. & cert. ef. 5-27-88; HWY 1-1992, f. & cert. ef. 2-11-92

Section VI: City Ordinances Relating to Pedestrians

City Ordinances Relating To Pedestrians

ALBANY MUNICIPAL CODE

13.28.010 Use of sidewalks.

Pedestrians shall not use any roadway for travel when sidewalks abutting the same are available. (Ord. 2751 § 26, 1957).

13.28.020 Crossing at right angles.

No pedestrian shall cross a street at any place other than by a route at right angles to the curb or by the shortest route to the opposite curb except in a marked crosswalk. (Ord. 2751 § 27, 1957).

13.28.030 Use of crosswalk required.

No pedestrian shall cross a street other than within a crosswalk in blocks with marked crosswalks. (Ord. 2751 § 28, 1957).

ASHLAND MUNICIPAL CODE

11.08.110 Pedestrian.

Means a person afoot. (Ord 1557 S2(10), 1968)

11.44.010 Use of sidewalks.

Pedestrians shall not use a roadway for travel when abutting sidewalks are available for doing so. (Ord 1557 S21, 1968)

11.44.020 Crossing at right angles.

No pedestrian shall cross a street at any place other than by a route at right angles to the curb or by the shortest route to the opposite curb except in a marked crosswalk. (Ord 1557 S22, 1968)

11.44.030 Crosswalk – Use required.

In blocks with marked crosswalks, no pedestrian shall cross a street other than within a crosswalk. (Ord 1557 S23, 1968)

ASTORIA CITY CODE

6.150 Crossing at Right Angles.

No pedestrian may cross a street at a place other than by a route at right angles to the curb or by the shortest route to the opposite curb except in a marked crosswalk.

6.155 Pedestrians Must Use Crosswalks.

In blocks where marked crosswalks are established, no pedestrian may cross the street other than within a marked crosswalk.

BEAVERTON MUNICIPAL CODE

6.02.500 Use of Sidewalks.

A pedestrian shall not use a street or the shoulder of a street for travel when a sidewalk is available.

6.02.510 Pedestrian Must Use Available Crosswalk.

No pedestrian shall cross a roadway outside of a marked crosswalk if within 150 feet of a marked crosswalk. [BC 6.02.510, amended by Ordinance No. 3883, 2/14/94]

6.02.520 Right Angles.

A pedestrian shall cross a street at a right angle, unless crossing within a crosswalk.

EUGENE CITY CODE

5.425 Right Angles.

A pedestrian shall cross a street at a right angle, unless crossing within a crosswalk. (Section 5.425, formerly section 5.470, renumbered by Ordinance No. 17690, enacted June 28, 1976.)

GRESHAM MUNICIPAL CODE

Section 8.55.010 Pedestrians.

- (1) Pedestrians shall cross a street at a right angle, unless crossing within an angled, marked crosswalk.
- (2) A pedestrian commits the offense of failure to use a crosswalk if:
 - (a) the pedestrian crosses a street other than within a crosswalk in blocks with marked crosswalks; or
 - (b) the pedestrian crosses a street within 150 feet of a marked crosswalk.
- (3) Exceptions. The provisions of this section regulating pedestrian use of the streets do not apply to employees of the city, county, state, or public utility while engaged in their official duties.
- (4) Failure to use a crosswalk is a Class B violation. (Ord. No. 1507, Amended, 09/19/2000; Ord. No. 1268, Amended, 12/17/1992)

MILWAUKIE MUNICIPAL CODE

Chapter 10.24 Pedestrians.

10.24.010 Regulations.

- (A) Pedestrians shall not use any roadway for travel when abutting sidewalks are available.
- (B) No pedestrian shall cross a street other than within a crosswalk in blocks with marked crosswalks or if within one hundred fifty feet of a marked crosswalk.
- (C) A pedestrian shall cross a street at a right angle, unless crossing within a crosswalk.
- (D) Pedestrians shall move, wherever practicable upon the right half of the sidewalk. (Ord. 1360 § 5, 1977)

OREGON CITY MUNICIPAL CODE

Title 10 Vehicles And Traffic.

Chapter 10.28 Pedestrians.

10.28.010 Jaywalking.

It is unlawful for any pedestrian to cross any of the streets in the city at any other place than the regular intersection crossing in line with the property line of the street, upon an area which would be covered by the sidewalk if extended. (Prior code §10-2-5)

PORTLAND CITY CODE

16.70.200 Pedestrians.

16.70.210 Must Use Crosswalks.

No pedestrian may cross a street other than within a crosswalk if within 150 feet of a crosswalk.

16.70.220 Must Cross at Right Angles.

A pedestrian must cross a street at right angles unless crossing within a crosswalk.

16.70.230 To Obey Directions of School Traffic Patrol and Crossing Guard.

At intersections where a member of the school traffic patrol or crossing guard is stationed for the safety of school children, all pedestrians must obey the directions of such school traffic patrol member or crossing guard. It is unlawful for any pedestrian to cross at any intersection where such patrol member or crossing guard is stationed contrary to the direction of such school traffic patrol member or crossing guard.

16.70.240 Bridge Railings.

No pedestrians may sit, stand on, or lean their torso over a Willamette River bridge railing unless engaged in bridge maintenance work or otherwise authorized by an appropriate government agency.

Pedestrians must use crosswalks to cross if located within 150 feet – a trap for the unwary because there are no warning signs to advise Portlanders or visitors of this legal requirement.

16.70.750 Penalty.

(Amended by Ordinance Nos. 165987 and 176394, effective April 17, 2002.)
Violation of this Chapter is an infraction punishable by a fine not to exceed \$150.

- (A) Except as provided below, violation of this Chapter is an infraction punishable by a fine not to exceed \$150.
- (B) Violation of Sections 16.20.470, 16.70.510 A, 16.70.210, 16.70.220 and 16.10.060, is punishable by a fine of not more than \$500, or by imprisonment not exceeding 10 days or both.

The penalty is \$500 and/or ten days imprisonment.

SANDY CITY CODE

10.34.010 Unlawful street obstruction.

- (A) A person commits the offence of unlawful street obstruction if the person obstructs the free movement of vehicles or pedestrians using the public right-of-way.
- (B) Section 10.34.010 does not apply to city, county, state or public utility employees engaged in their lawful duties, or persons engaged in construction work pursuant to a development or building permit.
- (C) Unlawful street obstruction is a Class B infraction. (Ord. 98-15 § 1 (part), 1998.)

10.32.010 Use of sidewalks.

A pedestrian shall not use a roadway for travel when a sidewalk is available. (Ord. 13-73 § 36, 1973.)

10.32.030 Right angles.

A pedestrian shall cross a street at a right angle, unless crossing with a crosswalk. (Ord. 13-73 § 38, 1973.)

10.32.040 Obedience to traffic lights.

At an intersection where a pedestrian control light is in operation, no pedestrian shall start to cross the street except when the walk signal is illuminated. Where only vehicle control lights are in operation, no pedestrian shall start to cross the street except when the green light is illuminated. (Ord. 13-73 § 39, 1973.)

SCAPPOOSE MUNICIPAL CODE OF ORDINANCES

11.04.240 Pedestrians – Use of crosswalks required.

No pedestrian shall cross a street other than within a crosswalk in blocks with marked crosswalks, or if within one hundred fifty feet of a marked crosswalk. (Ord. 516 §23, 1986)

11.04.250 Street crossing – Right angles.

A pedestrian shall cross a street at a right angle, unless crossing within a crosswalk. (Ord. 516 §24, 1986)

11.04.110 Obstructing streets.

No unauthorized person shall obstruct the free movement of vehicles or pedestrians using the streets. (Ord. 516 §11, 1986)

SPRINGFIELD MUNICIPAL CODE

6.410 Pedestrians.

The operator of a bicycle shall give the right-of-way at all times to a pedestrian proceeding lawfully, regardless of when and where the bicycle is being operated.

6.110 Obstructing Streets.

Except as this code provides to the contrary, no person shall place, park, deposit, or leave upon any street or other public way, sidewalk, or curb any vehicle, article, thing, or material which in any way prevents, interrupts, impedes or obstructs the free passage of pedestrian or vehicular traffic, or obstructs a driver’s view of traffic or official traffic control device.

6.115 Use of Sidewalks.

Pedestrians shall not use any roadway for travel when abutting sidewalks are available.

6.120 Play Vehicles Restricted.

No person upon roller or in-line skates, or riding in or by means of any coaster, sled, toy vehicle, or similar device, shall go upon any street except to cross at a crosswalk.

ST. HELENS MUNICIPAL CODE

10.04.250 Pedestrians must use crosswalks.

No pedestrian shall cross a street other than within a crosswalk in blocks with marked crosswalks or if within 150 feet of a marked crosswalk. (Ord. 2274 § 25, 1978)

10.04.260 Right angles.

A pedestrian shall cross a street at a right angle unless crossing within a crosswalk. (Ord. 2274 § 26, 1978)

STAYTON CITY CODE

10.32.810 Crossing Streets at Right Angles.

A pedestrian shall cross a street at right angles unless crossing within a marked crosswalk. (Ord. 667, section 1[part], 1989)

TIGARD MUNICIPAL CODE

10.32.060 Use Of Sidewalks.

Pedestrians shall not use any roadway for travel when abutting sidewalks are available. (Ord. 70-41 Ch. 8 §6, 1970).

10.32.235 Use of Crosswalks (Jaywalking).

- (a) No pedestrian may cross the street or roadway other than within a crosswalk if they are within 100 feet of a crosswalk.
- (b) A pedestrian shall cross a street or a roadway at a right angle unless crossing within a crosswalk.

TROUTDALE CITY ORDINANCES

10.20.010 Use of crosswalks required.

No pedestrian shall cross a street other than within a crosswalk in blocks with marked crosswalks or if within one hundred fifty feet of a marked crosswalk. Pedestrians shall not use a roadway for travel when abutting sidewalks are available. (Ord. 352-0 § 2 (7.10.165), 1981)

10.20.020 Crossing streets at right angles.

A pedestrian shall cross a street at a right angle, unless crossing within a crosswalk. (Ord. 352-0 § 2 (7.10.170), 1981)

WEST LINN MUNICIPAL CODE

8.02.120 Pedestrian traffic.

- (1) No pedestrian shall:
- (2) Use any roadway for travel when sidewalks abutting the same are available; or
- (3) Cross a street at any place other than in a marked crosswalk or by the shortest route to the opposite curb if no crosswalks are located within the block of the street being crossed. (Ord. 2951 § 1 (part), 1996)

Violations: Violations of this Section may upon conviction thereof, be punished by a fine not to exceed \$100.00. In addition thereto, the Municipal Judge may prohibit the operation of the device used in the violation for a period not to exceed 30 days. In such event, the Chief of Police shall be directed to impound the device, and retain it for the period that the operation is prohibited. An officer who issues a citation to a person for operating a device during a period of prohibited operation as ordered by the Municipal Judge, or to a person previously convicted of a violation of this Section during the preceding twelve-month period, may impound the subject device and dispose of it in accordance with the procedures in this Code for disposal of personal property, if the person is found guilty of the second offense. (Ord. 3098 § 1, 2001: Ord. 2951 § 1 (part), 1996)

WOODBURN CITY ORDINANCES

Pedestrians.

Section 32. Right Angles.

A pedestrian shall cross a street at a right angle, unless crossing within a crosswalk.

Section 33. Use of Available Crosswalk.

No pedestrian shall cross a street other than within a crosswalk in blocks with marked crosswalks or if within 150 feet of a marked crosswalk.

YAMHILL ACTIVE MUNICIPAL CODE

6.08.090 Pedestrians Must Use Crosswalks.

No pedestrian shall cross a street other than within a crosswalk in blocks with marked crosswalks, or if within 150 feet of a marked crosswalk. (Ord. 314, §25, 1977)

6.08.100 Right Angles.

A pedestrian shall cross a street at a right angle unless crossing within a crosswalk. (Ord. 314, §26, 1977)

Section VII: Rules Relating To Insurance

Insurance Company Rules and Regulations

These statutes and administrative rules are the legal requirements for all insurance transactions. You have the legal right to have insurers follow these rules every time, all the time.

ORS 746.230 Unfair claim settlement practices.

- (1) No insurer or other person shall commit or perform any of the following unfair claim settlement practices:
 - (a) Misrepresenting facts or policy provisions in settling claims;
 - (b) Failing to acknowledge and act promptly upon communications relating to claims;
 - (c) Failing to adopt and implement reasonable standards for the prompt investigation of claims;
 - (d) Refusing to pay claims without conducting a reasonable investigation based on all available information;
 - (e) Failing to affirm or deny coverage of claims within a reasonable time after completed proof of loss statements have been submitted;
 - (f) Not attempting, in good faith, to promptly and equitably settle claims in which liability has become reasonable clear;
 - (g) Compelling claimants to initiate litigation to recover amounts due by offering substantially less than amounts ultimately recovered in actions brought by such claimants;
 - (h) Attempting to settle claims for less than the amount to which a reasonable person would believe a reasonable person was entitled after referring to written or printed advertising material accompanying or made part of an application;
 - (i) Attempting to settle claims on the basis of an application altered without notice to or consent of the applicant;
 - (j) Failing, after payment of a claim, to inform insureds or beneficiaries, upon request by them, of the coverage under which payment has been made;

- (k) Delaying investigation or payment of claims by requiring a claimant or the physician of the claimant to submit a preliminary claim report and then requiring subsequent submission of loss forms when both require essentially the same information;
 - (l) Failing to promptly settle claims under one coverage of a policy where liability has become reasonably clear in order to influence settlements under other coverages of the policy; or
 - (m) Failing to promptly provide the proper explanation of the basis relied on in the insurance policy in relation to the facts or applicable law for the denial of a claim.
- (2) No insurer shall refuse, without just cause, to pay or settle claims arising under coverages provided by its policies with such frequency as to indicate a general business practice in this state, which general business practice is evidenced by:
- (a) A substantial increase in the number of complaints against the insurer received by the Department of Consumer and Business Services;
 - (b) A substantial increase in the number of lawsuits filed against the insurer or its insured by claimants; or
 - (c) Other relevant evidence.

OAR 836-080-0220 Misrepresentation and other prohibited claim practices.

An insurer shall not:

- (1) Fail to fully disclose to a first party claimant all pertinent benefits, coverages and other provisions of an insurance policy under which the claim is asserted.
- (2) Conceal from a first party claimant any insurance policy benefits, coverages or other provisions that are pertinent to the claim.
- (3) Deny a claim on the grounds of the claimant's failure to exhibit the relevant property without proof of the insurer's demand and the claimant's unfounded refusal.
- (4) Except where there is such time limit specified in the policy, make statements, written or otherwise, that require a claimant to give written notice of loss or proof of loss within a specified time and that seek to relieve the insurer of its obligations if the time limit is not complied with, unless the failure to comply with the specified time limit prejudices the insurer's rights.
- (5) Request a first party claimant to sign a release that extends beyond the subject matter that gave rise to the claim payment.
- (6) Issue checks or drafts in partial settlement of a loss or claim under a specific policy coverage that contain language releasing the insurer or its insured from its total liability.

OAR 836-080-0225 Required claim communication practices.

An insurer shall:

- (1) Not later than the 30th day after receipt of notification of claim, acknowledge the notification or pay the claim. An appropriate and dated notation of the acknowledgment shall be included in the insurer's claim file.

- (2) Not later than the 21st day after receipt of an inquiry from the Director about a claim, furnish the Director with an adequate response.
- (3) Make an appropriate reply, not later than the 30th day after receipt, to all other pertinent communications about a claim from a claimant that reasonably indicate a response is expected.
- (4) Upon receiving notification of claim from a first party claimant, promptly provide necessary claim forms, instructions and assistance that is reasonable in the light of the information possessed by the insurer, so that the claimant can comply with the policy conditions and the insurer's reasonable requirements. Compliance with this section not later than the 30th day after receipt of notification of a claim constitutes compliance with section (1) of this rule.

OAR 836-080-0230 Standard for Prompt Claim Investigation.

An insurer shall complete its claim investigation not later than the 45th day after its receipt of notification of claim, unless the investigation cannot reasonably be completed within that time.

Section VIII: Additional Resources

Additional Resources

NATIONAL

www.americawalks.org

America Walks is a national coalition of local advocacy groups dedicated to promoting walkable communities. Members are autonomous grass-roots organizations from across the country, each working to improve conditions for walking in their area. The mission of America Walks is to foster the development of community-based pedestrian advocacy groups, to educate the public about the benefits of walking, and, when appropriate, to act as a collective voice for walking advocates.

www.ava.org

American Volkssport Association is an educational non-profit 501c(3) corporation dedicated to promoting non-competitive physical fitness, friendship, and fun through volkssporting events.

www.cdc.gov/nccdphp/dnpa

Centers for Disease Control and Prevention (CDC): Division of Nutrition, Physical Activity and Obesity (DNPAO) takes a public health approach to address the role of nutrition and physical activity in improving the public's health and preventing and controlling chronic diseases. The scope of DNPAO activities includes epidemiological and behavioral research, surveillance, training and education, intervention development, health promotion and leadership, policy and environmental change, communication and social marketing, and partnership development.

www.walkableamerica.org

Partnership for a Walkable America (PWA) is a national coalition working to improve the conditions for walking in America and to increase the number of Americans who walk regularly. The members are national governmental agencies and non-profit organizations concerned about three main areas: Health, Safety and the Environment.

www.pedbikeinfo.org

Pedestrian and Bicycle Information Center works to improve the quality of life in communities through the increase of safe walking and bicycling as a viable means of transportation and physical activity.

safety.fhwa.dot.gov/ped_bike/ped/ped_walkguide

A Resident's Guide for Creating Safe and Walkable Communities is designed to be used by anyone looking for ways to improve the walkability of their neighborhood, whether they are just beginning to learn about pedestrian safety or are already part of an established community safety group.

www.saferoutesinfo.org

Safe Routes to School National Center aims to assist communities in developing successful Safe Routes programs and strategies. The Center offers a centralized resource of information on how to start and sustain a Safe Routes to School program, case studies of successful programs as well as many other resources for training and technical assistance.

LOCAL**www.allweatherwalkers.org**

All Weather Walkers (AWW) formed in 1992 with a goal to feature the many beautiful parks and neighborhoods in Clark County and surrounding areas. Enthusiastic club volunteers research our local community and find many interesting walking locations. The club organizes several events every year.

www.actsoregon.org

Alliance for Community Traffic Safety (ACTS) Oregon is working to reduce fatalities, injuries, and the severity of injuries resulting from vehicle crashes throughout Oregon. The organization's vision is to motivate individuals and communities throughout Oregon to solve their traffic safety problems by providing resources, technical training, and education.

www.portlandonline.com/transportation/index.cfm?c=40390

Community and School Traffic Safety Partnership is a collaborative partnership to improve traffic safety that includes the Portland Office of Transportation, Portland Police Bureau, neighborhoods, pedestrian and bicycle advocates, schools, Multnomah County courts, PSU, health professionals, and senior advocates.

www.portlandonline.com/transportation/index.cfm?c=34768

City of Portland: Transportation Options offers a variety of projects and programs to encourage more Portland residents to walk, bike, take transit, and carpool. Portland area residents can order area walking maps, bicycle route maps, bicycling fact sheets, and more. Options also organizes a series of guided neighborhood walks through the Ten Toe Express campaign and Senior Stroll program. Smart Living classes are offered in the spring and fall on pedestrian and bicycle safety, cooking and other healthy living skills.

www.eldersaction.org

Elders in Action is a powerful voice for local seniors whose mission is “To assure a vibrant community through the active involvement of older adults.” For more than 30 years, Elders in Action has worked to improve the quality of life for older adults. The organization represents the interests of seniors in the Portland metropolitan area through volunteer-driven programs.

www.communityhealthpartnership.org

Community Health Partnership: Oregon’s Public Health Institute is improving the health of Oregonians through advocacy and support of effective public health policy and activities.

www.oregon.gov/DHS/ph/pan/index.shtml

Oregon DHS: Physical Activity and Nutrition Program is part of the Health Promotion and Chronic Disease Prevention Program and is teamed with two existing groups, the Oregon Coalition for Promoting Physical Activity (OCPPA) and the Nutrition Council of Oregon, to promote daily physical activity and healthy eating through implementation of Oregon’s State Plans.

www.dhs.state.or.us/publichealth/hpcdp

Oregon DHS Health: Promotion and Chronic Disease Prevention is working to promote the health of Oregonians by advancing policy and developing public health programs that prevent chronic diseases from occurring, detect chronic diseases at the earliest stages when they are most treatable, and prevent further complications.

www.ode.state.or.us/search/results/?id=234

Oregon Department of Education: Healthy Kids Learn Better is a partnership led by specialists from the Oregon Department of Education and the Oregon Department of Human Services – Health Services, in collaboration with other health and education organizations.

www.legacyhealth.org/body.cfm?id=1926

Legacy Emmanuel Hospital – Trauma Nurses Talk Tough (TNNTT) “Graduated Driver’s Licensing (GDL) Workshops” are designed for high school freshmen and sophomores, with their parents. The three-hour evening workshops are held at local high school. The target audience is the 70 percent of youth who do not enroll in a formal school-based or professional driver’s education course. Presenters include a TNNTT nurse, attorney/judge and peer educator, and includes a TNNTT slide show. The workshops are arranged through a partnership with the local Department of Transportation, Traffic Safety Coalitions and school administration and are presented at high schools throughout the school year.

www.oregon.gov/DHS/ph/ofhs

Oregon DHS: Health Office of Family Health administers programs aimed at improving the overall health of Oregon’s women, infants, and children through preventive health programs and services. This includes developing public health systems and services that improve both quality of and access to health care; working with public and private agencies to improve health outcomes; and promoting culturally sensitive services.

www.oregon.gov/ODOT/HighwayRegions.shtml

Oregon Department of Transportation: Region Offices – There is a safety representative located in each of the five regional offices of the Department of Transportation throughout the state. They serve as local transportation safety advocates, assisting in the identification of traffic safety problems and helping to determine appropriate remedies. Staff members coordinate local transportation safety activities and act as liaison to Salem-based transportation safety programs.

www.oregon.gov/ODOT/HWY/BIKEPED

Oregon Department of Transportation: Bicycle and Pedestrian Program provides direction to ODOT in establishing pedestrian and bicycle facilities on state highways. They also provide support to local governments, governmental and non-governmental organizations and private citizens, in planning, designing and constructing pedestrian and bicycle facilities.

www.oregon.gov/ODOT/TS/about_us.shtml

Oregon Department of Transportation – Transportation Safety provides information, direct services, grants and contracts to the public and to partner agencies and organizations. More than half the funding comes from federal funds earmarked for safety programs. The division administers more than 550 grants and contracts each year to deliver safety programs to Oregon citizens.

www.walkoregon.org

Oregon Trail State Volkssport Association (OTSVA) is a “dynamic, though meticulous organization dedicated to the coordination of the many local Oregon walking clubs.” They hold bi-monthly meetings to “discuss such mundane things as Volkssporting By-Laws, and more exciting things such as upcoming walks and complex events.”

home.earthlink.net/~rcrose/RoseCityRoamers

Rose City Roamers is a walking organization in Portland, Oregon, devoted to the promotion of health and fitness through participation in various non-competitive sports activities. The most popular activity is walking, but they also include cross country skiing, swimming and bicycling.

www.silversneakers.com

Silver Sneakers offers an innovative blend of physical activity, healthy lifestyle and socially oriented programming that allows older adults to take greater control of their health. Silver Sneakers members receive a free fitness center membership at a nearby participating location, customized classes designed exclusively for older adults who want to improve their strength, flexibility, balance and endurance, health education seminars and other events that promote the benefits of a healthy lifestyle, and more.

www.walknbike.org

Walk and Bike to School Oregon features a “Walk + Bike to School Challenge Month” with over 30 Oregon schools participating in a friendly competition between Portland State University and Portland metro area elementary schools to have the greatest number of students walk and bike to school.

www.wpcwalks.org

Willamette Pedestrian Coalition is a non-profit community-based membership organization in the greater Portland, Oregon area dedicated to promoting walking and making the conditions for walking safe and attractive.

www.wondersofwalking.com

Wonders of Walking (WOW) celebrates you, the walker by offering a range of walking events for walkers by walkers. They celebrate health, fun and social benefits of walking by providing walking events that are: Fun * Have A High Standard Of Excellence * Celebrate The Accomplishment Care For Community * Have An Abiding Respect For The Athlete In Us All.



Walkers – Know Your Legal Rights!

SUMMARY OF OREGON LAWS

Crosswalk Laws

- Pedestrians have right of way on sidewalks, marked AND UNMARKED crosswalks and multi-use paths (**ORS 811.025, 811.028**)
- Vehicles must stop and remain stopped for pedestrians in crosswalks in BOTH the lane of travel AND the adjacent lane (**ORS 811.028**)
- As soon as a pedestrian steps onto a safety island all vehicles on the side of the road where the pedestrian is headed must stop and remain stopped as if the pedestrian had already entered the adjacent lane of travel (**ORS 811.028(3)(a)**)
- Vehicles may not overtake and pass a vehicle stopped for a pedestrian in a crosswalk (**ORS 811.020**)
- Pedestrians not in crosswalks must yield to all vehicles on the roadway (**ORS 814.040**)

Passing Laws

- Bicyclists must provide an AUDIBLE WARNING when passing a pedestrian on a sidewalk (**ORS 814.410**)

Roads and Highways

- Pedestrians may walk upon the highway shoulder facing traffic as far as practical from the roadway edge if there is no sidewalk (or on the right side of a divided highway) (**ORS 814.070**)
- OR if there is no usable shoulder or sidewalk then pedestrians may walk facing traffic on the outside edge of the roadway (**ORS 814.070**)

Shoulders and Sidewalks

- Pedestrians must walk upon a usable shoulder adjacent to the roadway if available rather than on the roadway (**ORS 814.070**)

Walk and Traffic Signals

- Pedestrians must obey Walk and traffic signals. A yellow traffic light means “don’t walk” unless already in the crosswalk (**ORS 814.010**)
- At intersections with a traffic control device vehicles must stop and remain stopped for pedestrians in the lane of travel plus six feet on either side (**ORS 811.028**)

Right of Way

- Motorists may only open a vehicle door when it will not interfere with pedestrian traffic and may leave it open no longer than necessary to load or unload passengers (**ORS 811.490**)
- Motorists may not park on sidewalks, within 20 feet of crosswalks, within 50 feet of traffic control devices if view is obstructed, or on bike paths (**ORS 811.550**)
- Motorists must stop when emerging from an alley, driveway or building before crossing a sidewalk (**ORS 811.505**)

Insurance

- All Oregon car insurance owned by drivers or pedestrians covers pedestrians in collisions with cars even if the motorist is uninsured (“UIM” **ORS 742.504**) or the pedestrian is at fault (“PIP” **ORS 742.520**)

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