

SR

the CM be + h5 is requested to confer w/
Ordered: That ~~the request from the City Manager~~
the Law Department to draft a home rule
petition to regulate bicycle couriers and to ~~report~~
research whether other municipalities or states
require courier companies to carry insurance for
injuries caused by couriers



City of Cambridge

Consent Agenda #12

IN CITY COUNCIL

January 25, 1999

COUNCILLOR RUSSELL

ORDERED: That the City Manager be and hereby is requested to confer with the Law Department to draft a home rule petition to regulate bicycle couriers and to research whether other municipalities or states require courier companies to carry insurance for injuries caused by couriers.

In City Council January 25, 1999.

Adopted by the affirmative vote of nine members.

Attest:- D. Margaret Drury, City Clerk.

A true copy;

A handwritten signature in cursive script that reads "D. Margaret Drury".

ATTEST:-

D. Margaret Drury
City Clerk

Russell B. Higley
City Solicitor

Donald A. Drisdell
Deputy City Solicitor

Nancy E. Glowa
First Assistant
City Solicitor

Arthur J. Goldberg
Supervising
Legal Counsel



CITY OF CAMBRIDGE

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Assistant City Solicitor

January 20, 1999

Robert W. Healy
City Manager
City Hall
Cambridge, MA 02139

Re: Bicycle Courier regulations:
Council Orders #64 of 2/2/98; #62 of 1/11/99; and #70 of 1/11/99.

Dear Mr. Healy:

Each of the above Council Orders relates to bicycle couriers: #064 asks the Law Department to review the City of Boston home rule petition concerning bicycle couriers to determine whether similar provisions could be adopted for Cambridge; #62 asks for a progress report on bicycle courier regulations; and #70 asks what recourse the City would have against a reckless bicyclist who injures a pedestrian, and if none, how the City could create an avenue of recourse in such a situation.

A copy of the City of Boston enactment is attached. Similar provisions could be enacted in Cambridge if Cambridge followed a similar process of submitting a home rule petition to the Legislature. Boston attorneys reasonably believed that the City of Boston lacked authority to create the regulatory scheme described in the ordinance without the state's approval. State approval appears to be required, among other reasons, because G.L.c.85, s.11B allows every person to operate a bicycle upon public ways, subject to some regulation. The Boston law puts strict limits on that right for bicyclists who happen to be couriers.

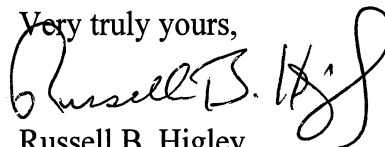
At present, the City does not have any particular recourse against a reckless bicyclist other than ticketing for violation of traffic laws. The District Attorney's office could conceivably bring criminal charges, when appropriate, for assault and battery. G.L.c.265, s.13A prescribes a penalty of up to two and a half years imprisonment as well

as a fine for assault and battery. An assault and battery would occur when a bicyclist intentionally hits and injures the pedestrian, or when the bicyclist intentionally commits a wanton or reckless act (something more than gross negligence) that causes physical injury to the pedestrian. Commonwealth v. Burno, 396 Mass. 622, 625 (1986).

Enactment of a law such as Boston's would create recourse against a bicycle courier and the messenger service for which the courier works. Under Boston's scheme, the Police Commissioner could revoke a courier's license for cause (Section 11) and the messenger service would have to have insurance against injuries (Section 13) which the injured party could presumably take advantage of.

In Cambridge, the Traffic Director, by special act, currently has authority over bicycle traffic on City streets. See Solicitor's Opinion of March 3, 1995 attached. Therefore, if Cambridge seeks state legislative approval for local bicycle courier laws, the petition should be drafted so as to be consistent with the Traffic Director's existing authority.

Very truly yours,



Russell B. Higley

CITY OF BOSTON
IN CITY COUNCIL

ORDER OF COUNCILORS MURPHY AND KEANE

**PROVIDING FOR REGISTRATION OF BICYCLE MESSENGER SERVICES AND
LICENSING OF COMMERCIAL MESSENGERS IN THE CITY OF BOSTON**

WHEREAS on any given day, it is estimated that more than 300 bicycle couriers ride through Boston streets making deliveries or pick-ups of packages, documents or other small items; and

WHEREAS their activities are commercial in that they are compensated by commercial delivery services or directly by firms which utilize and/or employ them, and

WHEREAS near accidents and injuries involving commercial bicycle messengers, as well as endangering of pedestrians, warrant City of Boston oversight with respect to these messengers; and

WHEREAS all bicyclists are required to obey all rules and regulations that apply to motor vehicles in accordance with M.G. L. Chapter 85, Section 11 B; and

WHEREAS in the interest of public safety, the city wishes to establish regulations to address this problem; **NOW THEREFORE, be it**

ORDERED:- That a petition to the General Court, accompanied by a bill for a special law relating to the City of Boston to be filed with an attested copy of this order be, and hereby is, approved under Clause (1) of Section eight of Article two, as amended, of the Amendments to the Constitution of the Commonwealth of Massachusetts, to the end that legislation be adopted providing precisely as follows, except for clerical or editorial changes of form only:---

**17-17 REGISTRATION OF BICYCLE MESSENGER SERVICES AND
LICENSING OF COMMERCIAL BICYCLE MESSENGERS.**

Notwithstanding any other general or special law to the contrary, the following special act shall govern in the City of Boston.

SECTION ONE: PURPOSE

The purpose of this Special Law is to establish a mechanism for registering commercial bicycle messenger services and licensing commercial messengers as a traffic safety control measure.

SECTION TWO: DEFINITIONS

Where used in this special law, the following terms shall mean:

"Commercial Bicycle Messenger" - any person compensated for using a bicycle to carry or transport any article over the public ways in Boston. Nothing in this Ordinance shall be construed as applying to persons under the age of seventeen (17) who use a bicycle to deliver daily newspapers or circulars.

"Commercial Bicycle Messenger License" - a numbered permit issued by the Commissioner which includes, but is not limited to, the name, residential address, telephone number and date of birth, of the applicant.

"Commercial Bicycle Messenger Service" - any individual, firm, association, corporation, partnership or joint venture, including independent contractors who are not affiliated with an organized Commercial Bicycle Messenger Service, doing business in the City of Boston, whose business is the local pick-up, transport, and delivery of small packages, but not limited to letters, documents, or other articles, including food, by bicycle on behalf of any commercial, industrial, governmental, charitable or other enterprise.

"Commercial Bicycle Messenger Identification Device" - a lightweight numbered reflective device to be visibly displayed on the back or back pack of the bicycle messenger of such material, form, design, and dimension as the Commissioner shall prescribe by regulation.

"Commercial Bicycle Messenger License Plate" - a numbered reflective plate to be visibly displayed on the back of the bicycle attached to the rear of the bicycle seat made of such material, form, design, and dimension as the Commissioner shall prescribe by regulation.

"Commissioner" - Commissioner of the Boston Police Department

"Registration" - registration issued by the Commissioner to a commercial bicycle messenger service.

"Year" - for purpose of this Ordinance, the word "year" shall mean a calendar year.

SECTION THREE: REGISTRATION OF COMMERCIAL BICYCLE MESSENGER SERVICES

All commercial bicycle messenger services shall register with the Commissioner. A registration form shall be approved by the Commissioner and shall include, in addition to other information deemed necessary by the Commissioner, the following:

- 1) Name, address, and telephone number of the commercial bicycle messenger service.
- 2) Name and principal residential address of the owner(owners) of the commercial bicycle messenger service.
- 3) Name, address and telephone number of a person authorized to receive notices issued pursuant to this Ordinance.
- 4) Statement indicating number of licensed commercial bicycle messengers employed or utilized by the service at the time of the registration, including the name, telephone number and address of each messenger.

Each corporate applicant for a bicycle messenger license shall be organized and qualified to do business under the laws of the Commonwealth of Massachusetts.

SECTION FOUR: CONDITIONS OF REGISTRATION

As a condition of registration, the commercial bicycle messenger service shall:

- 1) Employ or utilize only licensed commercial bicycle messengers.
- 2) Keep available for inspection by the Commissioner, or his/her designee, an updated list of licensed commercial bicycle messengers employed or engaged by the service. Deliver an updated list of bicycle messengers utilized or employed to the Boston Police Department Licensing Division on the first day of each month.
- 3) Be responsible for instructing licensed commercial bicycle messengers in safe bicycling techniques in accordance with M.G. L. Chapter 85, Section 11 B, and established principles of safe bicycle riding, and documenting the same.

Registration by a commercial bicycle messenger service will cost \$25.00 and will be valid for a one (1) year period. It shall be the responsibility of a commercial bicycle messenger service to renew its registration. Cost of registration renewals shall be \$25.00.

A commercial bicycle messenger service shall be subject to a fine of \$100. 00 per day, per violation of the conditions for registration pursuant to this section.

SECTION FIVE: LICENSING OF COMMERCIAL BICYCLE MESSENGERS

All commercial bicycle messengers who operate on Boston public ways shall apply to the Commissioner for a commercial bicycle messenger license and a commercial bicycle messenger identification device and license plate with an identifying number attached.

The commercial bicycle messenger license application form shall include, in addition to other information deemed necessary by the Commissioner, the following:

- 1) Applicant's name, principal residential address, telephone number, date of birth, name and address of the company employing or engaging the applicant's services
- 2) A statement that the applicant is aware of all traffic rules and regulations with respect to vehicular travel and with respect to the safety and the rights of pedestrians, and
- 3) Acceptable forms of identification in addition to any information required by the Police Commissioner.

A license issued in accordance with this ordinance shall be carried by the bicycle messenger on his/her person at all times while in the performance of his/her duties as a bicycle messenger, and must be shown when requested by a police officer or if involved in an accident or if requested by the person(s) in charge of a building or place of business.

SECTION SIX: APPROVAL BY COMMISSIONER

The Commissioner may approve the application and issue the applicant a commercial bicycle messenger license and a commercial bicycle messenger identification device and license plate within (3) working days of receipt of the application.

SECTION SEVEN: MESSENGER LICENSE PLATES

Commercial bicycle messengers must prominently display a Boston Police Department issued license plate at the rear of the bicycle seat when employed or utilized as a commercial bicycle messenger.

Additionally, all bicycle messengers, when upon a bicycle, shall properly wear a D.O.T. approved bicycle safety helmet.

SECTION EIGHT:**APPLICATION FEES**

Application for a commercial bicycle messenger license and commercial bicycle messenger device and license plate shall be \$25.00 and shall be valid for a one (1) year period. It shall be the responsibility of the commercial bicycle messenger to renew the commercial bicycle messenger license, device and plate. Application for the yearly renewal shall cost \$25.00. A change in affiliation or employment with a Commercial Bicycle Messenger Service shall be a cause for renewal, however, there will be no cost for renewal due to a change in affiliation.

SECTION NINE:**FINES (LICENSE)**

A commercial bicycle messenger shall be subject to fine for failing to carry a commercial bicycle messenger license when employed or utilized as a commercial bicycle messenger. The fine shall be \$100.00 for the first offense, \$150.00 for the second offense and up to \$300.00 for all other subsequent offenses within the period of one (1) year.

SECTION TEN:**FINES (EQUIPMENT)**

A commercial bicycle messenger shall be subject to a fine for failing to wear, or wear properly, a D.O.T. approved helmet, a commercial bicycle messenger identification device and displaying the license plate, in compliance with Section 7, when employed or utilized as a commercial bicycle messenger. The fine shall be \$100.00 for the first offense, \$150.00 for the second offense and up to \$300.00 for all other subsequent offenses within the period of one (1) year.

SECTION ELEVEN:**POWERS OF COMMISSIONER**

The Commissioner shall have the power to deny, suspend, or revoke commercial bicycle messenger licenses issued pursuant to section five and six of this ordinance for cause at the will of the Commissioner. A commercial bicycle messenger shall have the right to request a hearing appealing any denial, suspension, or revocation of a commercial bicycle messenger license.

SECTION TWELVE:**RULES AND REGULATIONS**

The Commissioner shall have the authority to promulgate rules and regulations necessary or desirable for the administration of this Ordinance.

SECTION THIRTEEN: INSURANCE

Each commercial bicycle messenger service registering or renewing its registration or having a license re-issued for a new employee shall provide proof that the service and each commercial bicycle messenger utilized and/or employed by such service has insurance coverage in the following minimum amounts:

- 1) \$50,000.00 for property damages,
- 2) \$50,000.00 for injuries or death of any one person; and
- 3) \$100,000.00 for injuries to or death of more than one person in any one accident.

In addition, worker's compensation coverage must be provided as required by the laws of the Commonwealth of Massachusetts.

Any insurance policy required by this section must be in a form satisfactory to the commissioner and must provide that the policy will not be canceled and the amount of the coverage will not be changed unless 60 days prior written notice is given to the commissioner.

SECTION FOURTEEN: EFFECTIVE DATE

This Ordinance shall become effective within 120 days of its passage.

SECTION FIFTEEN: ENFORCEMENT

The provisions of this ordinance may be enforced by Massachusetts General Laws, Chapter 85, Section I IC.

SECTION SIXTEEN: SEVERABILITY

If any part of this ordinance is found to be unconstitutional, the remaining portion shall not be disqualified.

In City Council JUN 24 1998

Passed

Rosaria Salerno **City Clerk**

Approved

JUN 30 1998

Thomas R. Menino **Mayor**



CITY OF CAMBRIDGE

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March 3, 1995

Robert W. Healy
City Manager
City Hall
Cambridge, MA 02139

Re: Council authority over bicycle riding on sidewalks;
Council Order #44 dated 1/9/95;
Committee Report Order #05 dated 2/27/95

Dear Mr. Healy:

The City Council requested an opinion as to its legal rights to prohibit bicycle riding on City sidewalks (copy attached). The exclusive authority over bicycle riding on sidewalks resides in the Director of Traffic and Parking pursuant to section 3 of the Special Act establishing the Department of Traffic and Parking in Cambridge, Chapter 455, Acts of 1961. The Council is without authority to prohibit bicycle riding on City sidewalks.

Section 3 of the Act provides that:

The traffic director shall have exclusive authority...to take any and all of the following actions, if he determines that such actions serve the public safety, welfare or convenience....

(a) The traffic director may adopt, alter or repeal rules and regulations...relative to vehicular and pedestrian traffic in the streets of the city and to the movement...of vehicles on, and their exclusion from, all or any streets...under the control of the city....

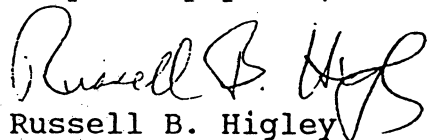
The Traffic Regulations define "vehicle" to include bicycles (Sec.

1.50) and define "street" to include sidewalks (Sec. 1.41). Article XII of the Traffic Regulations is entitled Regulations for Bicycles.

G.L.c.85, s.11B provides that "bicycles may be ridden on sidewalks outside business districts when necessary in the interest of safety, unless otherwise directed by local ordinance." The reference to "local ordinance", in Cambridge, should be read to mean "local traffic regulation," in light of the Special Act for Cambridge giving exclusive regulatory authority to the Director of Traffic and Parking.

Please contact me if I can be of further assistance.

Very truly yours,


Russell B. Higley



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12.

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
Deputy City Manager

January 25, 1999

To The Honorable, The City Council:

Please find attached a response to Awaiting Report Item No. 99-7, regarding a report on bicycle courier regulations, received from City Solicitor Russell B. Higley.

Very truly yours,

Robert W. Healy
City Manager

RWH/mec
Attachment

Consent Agenda #12

18-548

Relative to AR #99-7,
regarding a report on bicycle
courier regulations.

In City Council January 25, 1999

PLACED ON FILE

Referred to Law Department
to draft Home Rule Petition
sent to law dept 1/22/99