



Memo

To: Councilman Eric Bunch

From: Ruth Anne French-Hodson, BikeWalkKC board member & attorney

CC: Michael Kelley and Eric Rogers

I write in support of completely eliminating the current jaywalking ordinance from Kansas City's municipal code.

First, for full disclosure, I am not a resident of Kansas City, Missouri. However, I follow these issues closely as a board member at BikeWalkKC and use Kansas City, Missouri streets as both a pedestrian and a bicyclist. My home is three blocks from the State Line and I frequently navigate KCMO streets with no sidewalks, sidewalks in disrepair, and now—thankfully—sidewalks in the process of repair. As an attorney who is licensed and practices in Missouri, I am also familiar with both criminal and civil liability issues in Missouri and Kansas City.

I have heard some concerns have been raised about holding pedestrians responsible in the case of crashes. Under Missouri's civil liability regime, it is unnecessary—and likely even harmful—for jaywalking to remain a traffic violation. Simply put, there is little need to issue a citation to a pedestrian involved in a crash (the only potential benefit being raised for keeping the statute), but there is repeated evidence—both from Missouri and around the nation—that jaywalking ordinances are used to harass and target communities of color.

- First, Missouri is a pure comparative fault state. That means that in an crash, a victim must show that another person is responsible for their injuries. But then a judge or a jury can reduce the amount of damages the victim receives based on their determination of how responsible the victim is. In determining negligence by both parties, courts consider whether the individuals took reasonable care. This assessment of the responsibility of the parties is not dependent on whether traffic citations are issued or not. A victim who was jaywalking, but had exercised reasonable care, can still recover. Similarly, a pedestrian who does not exercise reasonable care and causes a crash can still be held responsible in civil litigation. Eliminating the jaywalking ordinance will not eliminate a pedestrian's responsibility to exercise reasonable care.

4448 FRANCIS ST., KANSAS CITY, KS 66103
T: 860-942-7260 *** rafrenchhodson@gmail.com



- As with any crash, police officers have the duty to investigate crashes and their reports provide information to the parties and courts on the care that was taken by all involved.

While I have found no reported court cases where a jaywalking citation was necessary to assess responsibility for a crash, I have found Missouri cases where jaywalking was used as a pretextual reason to stop individuals and where “zero tolerance” jaywalking zones were set up in certain neighborhoods to target individuals. *See, e.g., Taylor v. State*, 234 S.W.3d 532 (W.D. Mo. 2007) (ordering that evidence be suppressed and conviction vacated when Kansas City police officers had frisked an individual stopped for jaywalking in a “zero tolerance enforcement zone”). As has been documented across the country, Black pedestrians are much more likely to be cited and targeted for traffic violations like jaywalking.¹ Indeed, the Department of Justice found that in Ferguson, Missouri, “In cases of minor offenses where arrests are up to the officer’s discretion, like disturbing the peace and jaywalking, 95 percent of those arrested were African American.”² And the oft-cited Pro Publica study found no correlation between the number of deadly crashes and the ticketing locations.³ At bottom, the potential for abuse of the jaywalking statute is great and can disproportionately impact those already at risk.

Finally, people respond to the built environments that they live in. In Kansas City, many of us commute and move through the city as pedestrians. The occurrence of jaywalking should not be seen as a traffic violation, but more as an indication that our current infrastructure does not adequately allow pedestrians to access their needs in a safe manner. Other city initiatives—like Complete Streets and Vision Zero—will be much more important tools to decrease any unsafe pedestrian behavior than the use of ticketing through the traffic code.

¹ See “Analysis Finds Tickets Disproportionately Issued to Black Pedestrians,” Equal Justice Initiative (Nov. 30, 2017), available at <https://eji.org/news/analysis-finds-tickets-disproportionately-issued-to-black-pedestrians/>; “U.S. Justice Department Finds Ferguson Police and Courts Targeted African Americans,” Equal Justice Initiative (Mar. 6, 2015), available at <https://eji.org/news/justice-department-finds-ferguson-police-and-courts-targeted-african-americans/>; Peter Simek, “Dallas’ War on Jaywalkers,” *D Magazine* (Oct. 2015), available at <https://www.dmagazine.com/publications/d-magazine/2015/october/dallas-police-jaywalking-tickets/> (concluding that “a disproportionate percentage of all jaywalking citations issued in the city of Dallas are issued to African-American males”).

² “U.S. Justice Department Finds Ferguson Police and Courts Targeted African Americans,” Equal Justice Initiative (Mar. 6, 2015), available at <https://eji.org/news/justice-department-finds-ferguson-police-and-courts-targeted-african-americans/>.

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