

Subject: Ban of Delineators to Mark Bike Lanes

Menlo Park City Council,

I concur with Ms. Silver's request that you hold a hearing to ban the lethal cones, also known as delineators, from being used to mark bike lanes. The municipal code gives the City Council the ultimate responsibility and authority to address any public safety issue associated with traffic control devices in Menlo Park. Delineators, when inappropriately used to mark a bike lane, are inherently dangerous for bicyclists and expose bicyclists to the risk of serious or fatal injury, therefore they should be banned from that specific use by a resolution of the City Council.

Mr. Boyle, in his effort to dissuade Ms. Silver from requesting a ban of the delineators, failed to disclose the conflicts of interest that influenced his advice to her. With respect to a City Council hearing on a ban of delineators to mark bike lanes, if any Council Member at the hearing expresses opposition to such a ban, they need to disclose to the public the conflicts of interest that influence their positions against such a ban.

In the wrongful death lawsuit for Deborah Kay Johnson's fatal accident, the City in its defense took the position that delineators were appropriate to mark bike lanes. A ban, by establishing that delineators are inappropriate to mark bike lanes, would preclude the City's prior defense in the event of a future bicyclist accident. While Mr. Boyle confirmed for Ms. Silver that the City Council does not currently approve of delineators to mark bike lanes, he did not tell her whether or not the City Council, as the basis for not approving the use of delineators, believes delineators are inappropriate to mark bike lanes. In the absence of a City Council declaration that delineators are inappropriate to mark bike lanes, the City Council, if it decides against a ban, will effectively be acting to preserve its prior defense in the event of a future bicyclist accident and will be acting on this conflict of interest against the interests of bicyclists.

Mr. Boyle indicated to Ms. Silver that the City Staff recommended against a ban, which is to be expected since the City Staff has a conflict of interest in its desire to avoid all accountability and disciplinary action in the event of a bicyclist accident. When the City took the position in the wrongful death lawsuit that delineators were appropriate to mark the bike lane, it effectively absolved the City Staff of any accountability and disciplinary action because it had no recourse against individuals whose actions it defended as being appropriate. If the City Council does not declare the delineators to be inappropriate or if it does not approve a ban, then in the event there is another bicyclist accident the City Staff again will be able to act with impunity.

Mr. Boyle asked Ms. Silver to trust that the City Staff has sufficient policies and procedures in place to prevent delineators from being used to mark bike lanes even though he did not specify what those policies and procedures are. In a hearing, if any Council Member takes a position against a ban, these policies and procedures need to be specified for the public, i.e. for bicyclists. In the case of Deborah Kay Johnson's fatal accident, there were more than sufficient policies, procedures, standard practices and safety principles to preclude the use of delineators to mark bike lanes. The new or modified policies and procedures can be easily ignored just as those policies and procedures that were in effect at the time of Deborah Kay Johnson's fatal accident were ignored. Moreover, this does not address the unsound traffic engineering judgment and the failure to comprehend or anticipate bicyclist safety needs that were evidenced in that fatal accident and will continue to be a very high risk for bicyclists in the future.

I believe that the City Council and the City Staff by these conflicts of interests cannot credibly advocate against a ban and cannot fairly represent the interests of bicyclists on this issue.

The following hypothetical situation illustrates the risks to bicyclists of not implementing a ban of delineators to mark bike lanes. A couple of years from today a Public Works employee allows a repaving contractor to temporarily mark a bike lane with delineators. Mary, 17 years old, is wearing a helmet and riding in the bike lane marked by delineators when a squirrel darts into her path and as she tries to dodge the squirrel she strikes the base of a delineator. Mary flips up into the air and lands on the pavement in the path of a car in the adjacent traffic lane. She sustains serious brain and spinal injuries that incapacitate her for the rest of her life. In this instance without a ban, the City will claim that Mary is entirely at fault for the accident, i.e. she was distracted and she was riding too fast for conditions; the City will say that even though it did not approve of the use of the delineators it is nonetheless appropriate to use delineators to mark bike lanes; and the City will not discipline the Public Works employee because it will defend his conduct as appropriate.

In this hypothetical situation, the City Council, with the full knowledge of the dangers of delineators for bicyclists, will have violated its public safety obligation to bicyclists by condoning City Staff conduct that endangered bicyclists and led to a devastating accident.

Only through a zero tolerance policy and outright ban of delineators to mark bike lanes will the interests of the City Council and City Staff be brought into alignment with the interests of bicyclists. A ban provides bicyclists with the assurance that the City has the strongest possible incentive to ensure that such a serious or fatal accident will never again be repeated.

I submit this email in support of a ban on the use of delineators to mark bike lanes, which I ask the City Council to enter into the record at its hearing, preferably read into the record by the City Clerk since I will not be able to attend the hearing.

Sincerely,

Bike Safety Advocate

Emailed on September 8, 2010 to: city.council@menlopark.org