

Transportation ALTERNATIVES

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December 7, 2004

Honorable William H. Pauley III
United States District Judge
U.S. District Court, Southern District of New York
United States Courthouse
500 Pearl Street, Room 2210
New York, New York 10007-1581

Re: *Bray v. The City of New York* (04 CV 8255 (WHP))

Your Honor:

Transportation Alternatives (T.A.) submits this letter as a brief of amicus curiae urging the Court not to apply §16-122(b) of the New York City Administrative Code to bicycles locked in public places, and not to impose a permit requirement on group bicycle rides.

T.A. is New York's leading advocate for cycling, walking and environmentally sensible transportation. Incorporated in 1973, T.A. now has over 5,000 members. T.A. works with numerous government agencies and community organizations to develop policies and projects to make New York a more bicycle-friendly and pedestrian-safe city. Most recently, T.A. has been instrumental in obtaining more than \$80 million in government funding for bike lanes and paths, traffic calming, and pedestrian safety measures; winning bicycle access to the City's four East River bridges; building wider sidewalks and bike lanes in Herald Square; and improving traffic safety for children through the Citywide Safe Routes to School program.

I. SECTION 16-122(b) OF THE NEW YORK CITY ADMINISTRATIVE CODE SHOULD NOT APPLY TO LOCKED BICYCLES

In the course of the September 24, 2004 Critical Mass ride the police cut the locks and seized the bicycles of the plaintiffs, who had locked them to parking meters, lampposts and stop signs, *Bray v. City of New York*, 2004 WL 2406568, later claiming that plaintiffs had violated NYC Admin. Code § 16-122(b). (Def. Amend Ans. ¶ 24) This is an overbroad application of the regulation, and such an application threatens effectively to criminalize cycling in New York City. As a matter of statutory construction, § 16-122(b) should not be held to criminalize locking a bicycle to a street fixture. The structure and history of the statutory text both argue against the City's interpretation. Moreover, a court should not interpret an ambiguous statute so as to cause hardship, and given the lack of bicycle racks in the city, such an interpretation will surely have this effect.

New York City Administrative Code § 16-122(b) states, in its entirety:

It shall be unlawful for any person, such person's agent or employee to leave, or to suffer or permit to be left, any box, barrel, bale of merchandise or other movable property whether or not owned by such person, upon any marginal or public street or any public place, or to erect or cause to be erected thereon any shed, building or other obstruction.

The City urges this court to interpret the phrase “other movable property” as a catch-all that can subsume any property left out in public, including a bicycle locked to a street fixture, and make it subject to confiscation. However, both the text and the history of the provision argue against this interpretation.

In the text of § 16-122(b), the phrase “other movable property” follows a list of specific items, “box, barrel, bale of merchandise.” The *ejusdem generis* rule of statutory construction “requires a court to limit general language of a statute by specific phrases which have preceded the general language.” *McKinney's Cons. Laws of N.Y.*, Book 1, Statutes § 239; *see also Dime Sav. Bank, FSB v. State*, 174 A.D.2d 173, 180 (N.Y. App. Div. 2d Dept. 1992). More particularly, “[w]here a statute enumerates several classes of persons or things, and immediately following and classed with such enumeration the clause embraces “other” persons or things, the word “other” will generally be read as “other such like.” *McKinney's Cons. Laws of N.Y.*, Book 1, Statutes § 239; *Robert B. Blaikie & Co. v. New York*, 245 N.Y.S.2d 121, 125 (Sup. Ct. N.Y. 1963); *Velez v. Rossetti*, 289 N.Y.S.2d 79, 81 (Civ. Ct. N.Y. 1968). Applying *ejusdem generis* here, “other movable property” should be interpreted to include only commercial property or merchandise akin to a “box, barrel, [or] bale of merchandise,” such as crates, containers and drums, which are creating an obstruction or encumbrance of the public right of way. This reading—limiting the property covered to commercial goods, and limiting coverage to “obstructions”—is reinforced by the fact that the text of the statute covers both “any person” and “such person's agent or employee” (language evocative of business relationships), and by the fact that the text subsequently mentions “shed, building or other obstruction” (a shed being typically a commercial structure). The limited caselaw interpreting section 16-122(b) supports a reading confining the violation to obstructions. *See Betancourt v. Giuliani*, 2000 U.S. Dist. LEXIS 18516 at *6 (S.D.N.Y. 2001) (“the statute does not penalize people for ‘merely occupying any public space with a few of their personal belongings.’ ... Rather, it penalizes people for creating obstructions in public places”).

The history of the provision in question also argues against the City's claim that § 16-122 may be applied to bicycles locked to public fixtures. The predecessor to § 16-122, located at § 755(4)-2.0 of the Administrative Code, provided:

It shall be unlawful for any person, his agent or employee, to leave, or to suffer to permit to be left, any vehicle, box, barrel, bale of merchandise, or other movable property, owned by him, upon any public street, or to erect or cause to be erected thereon any shed, building or other obstruction. The owner or driver of a disabled

vehicle shall be allowed a reasonable time, not exceeding three hours, in which to remove it.

(Emphasis added.) “In 1969, the City Council amended the Section to create the current structure of Section 16-122 by adding subsections (a), (c), (e), and (f), which explicitly refer to motor vehicles.” *Betancourt v. Giuliani*, 2000 U.S. Dist. LEXIS 18516 at *8-*9. (The reference to disabled vehicles was removed from the above paragraph and eventually became subsection (c) of the current code.) At the same time, however, all reference to “vehicles” was removed from the text of what is now section 16-122(b). The legislature specifically removed language from § 16-122(b) that could have encompassed bicycles.¹ This court should not reinsert such language of its own accord.

Another factor arguing against the city’s reading is the fact that § 16-122(b) has, to our knowledge, not been invoked against parked bicycles in this fashion in the past. Even today, thousands of bicycles remain parked to street fixtures around the city without any pattern of the police citing their owners for violations of § 16-122(b). *See Norwegian Nitrogen Products Co. v. United States*, 288 U.S. 294, 313 (1933) (“long-standing and consistent administrative interpretation ... is entitled to strong judicial deference”); *United States v. Midwest Oil Co.*, 236 U.S. 459, 472-73 (1915) (“It may be argued that while [consistent administrative practices] prove a usage they do not establish its validity. But government is a practical affair intended for practical men. Both officers, law-makers and citizens naturally adjust themselves to any long-continued action of the Executive Department—on the presumption that unauthorized acts would not have been allowed to be so often repeated as to crystallize into a regular practice. That presumption is not reasoning in a circle but the basis of a wise and quieting rule that in determining the meaning of a statute or the existence of a power, weight shall be given to the usage itself—even when the validity of the practice is the subject of investigation.”). New York City’s cyclists have come to rely on the idea that parking their bicycles by locking them to parking meters and signposts is legal; a different ruling would upset the commuting patterns of many thousands of city residents and diminish the utility of their investments in their bicycles.

Given the ambiguity of the phrase “other movable property,” this Court should limit its construction of the phrase so as to avoid absurd, unjust or objectionable results. *See McKinney’s Statutes* §§ 113, 142, 143, 146. The enforcement of § 16-122(b) against bicyclists would not only deter Critical Mass riders from leaving their bicycles during rides, it could discourage thousands of bicyclists from using their bicycles for daily activities. If bicyclists cannot leave their bicycles “upon any marginal or public street or any public place,” the logical conclusion is that they can only leave them at authorized bicycle racks, and there are simply not enough racks in the city for this to be practical. For example, there are no bicycle racks on the block on which Macy’s is located, none in front of the Mid-Manhattan library, and none outside the Federal District Court for the Southern District. The City claims 3,400 outdoor bicycle racks in the five boroughs. As

¹ It is highly unlikely that only motorized vehicles were intended by the term “any vehicle” in the pre-1969 version of the text, as the word “any vehicle,” added in 1937, itself replaced a list of both motorized and non-motorized vehicles in the pre-1937 version of the statute (“any truck, cart, wagon, or other vehicles”). *See Russell v. James Butler Grocery Co.*, 267 N.Y.S. 138 (N.Y. App. Div. 1st Dept. 1933) (quoting older statute).

there are 6,375 miles of streets (www.nycvisit.com), this means there is an average of only one bike rack for every two miles of streets. This compares to 10,000 bicycle racks in Chicago (www.cityofchicago.org), which has 3,775 miles of streets (www.cityyear.org/sites/chicago/), for an average of more than 2.5 bicycle racks per street mile. Chicago has one rack for every four bicyclists; New York has one for every 33 bicyclists. Unless the City provides an adequate number of bicycle racks or bicycle parking for its size, it would be unreasonable to require bicyclists to find the odd bicycle rack before entering a store, library, court or other building.

A full report on the paucity of bicycle parking in New York City is available from T.A. at www.transalt.org/campaigns/bike/outdoor.html, and a press release summarizing the report is attached to this letter.

II. IMPOSING A PERMIT REQUIREMENT IS NOT NECESSARY FOR THE GOAL OF ENSURING THAT CRITICAL MASS RIDERS OBEY TRAFFIC LAWS AND WILL DISCOURAGE OTHER GROUP CYCLING EVENTS

The City has requested an injunction barring Plaintiffs and any other adequately-noticed riders from participating in any future Critical Mass rides “absent the grant of required city permits.” (Def. Mem. (Nov. 12, 2004) at 24) The City’s main justification is that this will allow closure of streets along the route, making things safer for participants, other vehicles and police officers alike. (Def. Mem. (Nov. 12, 2004) at 22). But closure of the streets is not necessary to ensure Critical Mass participants obey traffic laws. During Critical Mass rides, the participants ride on open streets as part of the ordinary mixed flow of vehicles. Under New York State Vehicle and Traffic Law and New York City DOT Traffic Rules, bicyclists have the same rights and responsibilities as motorists and thus should be regarded similarly by the court.

The central concern of the City and Police Department—the reason they want to block off the route and close it to other traffic—is the alleged widespread violation of traffic rules by Critical Mass riders. *See* Def. Mem. (Nov. 12, 2004) at 15 (“bicyclists involved ... regularly violate the provisions of the VTL and DOT Traffic Rules. ... interfere with pedestrian rights of way ... disobey traffic signals [and] the requirement that bicyclists must ride ... as near as practicable to the curb or edge of the roadway [and not] travel on roadways specifically excluded [for bicycles.]”).²

² Defendants’ original briefing misstated the restrictions that applicable law places on group bicycle rides, as Plaintiffs have ably explained in great detail in their briefs. Under New York State Vehicle and Traffic Law § 1642 and New York City Traffic Rules § 4-02(e), most of the state Vehicle and Traffic Law provisions pertaining to bicyclists (in particular, New York State Vehicle and Traffic Law § 1234) are not applicable in New York City. The City of New York does have its own set of traffic rules that apply to bicycle riders (New York City Traffic Rules § 4-12(p)), rules which are far less restrictive for cyclists than the inapplicable state rules the City relies on.

The City Police Department and Department of Transportation websites claim that bicyclists may not ride more than two abreast, and this claim has been repeated in the present suit. However, within New York City, no law prevents cyclists from riding more than two abreast. While New York *State* Vehicle and Traffic Law prohibits cyclists from riding more than

Imposing a permit requirement on the ride is not necessary to provide the police with legal sanctions sufficient to ensure compliance with the traffic laws. Furthermore, it is unclear that adding the requirement of a permit will aid the goal of ensuring lawful bike riding and the safety of the traveling public. The City's hope is that this court will hold that the Critical Mass ride requires a permit. With that ruling in hand, the City believes it will be able to penalize riders who ride without a permit (or stray from a permitted route) with criminal penalties under Admin. Code § 10-110. However, with or without a permit, if the riders violate traffic laws, the City is fully capable of controlling violations of traffic laws and will still be able to rely on other criminal sanctions to enforce compliance with those laws.

Apart from its effect on Critical Mass bike rides, the precedent of imposing such a permit requirement would also have a detrimental effect on many other group bicycle rides in the city. Every year in New York City there are millions of people who take part in thousands of formal and informal group bike rides. Because bicycling is good for New Yorkers and good for New York City, these many rides are beneficial, and the vast majority of them are innocuous. Some typical examples of groups rides found everyday in New York City include:

- A group of bikers that assembles at a red light (a daily occurrence due to the growing popularity of biking) and then pedals off together, enjoying the added visibility and safety of their small, coincidental group.
- Families and friends getting together to ride to any of the city's peaceful parks and greenway paths, such as Central, Riverside, Hudson River, Prospect, Jamaica Bay, Pelham Bay, Bronx, Flushing Meadows-Corona, Alley Pond, Kissena, Forest, Wolfs Pond, Great Kills, or Conference House Parks.
- Children biking in groups for safety and transportation (many of which are organized by Recycle-A-Bicycle, the Harlem Urban Youth Bike Corps, Harlem Hospital, the Boy and Girl Scouts, schools, etc.).
- Civic and neighborhood association bike rides organized by block associations, community organizations, advocacy groups, etc.
- Bike racing training rides (led by the Century Road Club Association (the oldest bike racing club in NYC), the Kissena Cycling Club, Brooklyn Velo Force and scores of other bicycle racing clubs).
- Bike club group rides led by Bike New York, Fast and Fabulous, the Five Borough Bike Club, New York City Cycling Club, Sierra Club, Staten Island Bicycle Association, Times Up!, Transportation Alternatives, and the Weekday Cyclists, among others.

two abreast, VTL § 1234(b), that provision of the state code has been specifically superseded by New York City law, 34 RCNY § 4-02(e). New York City law includes no prohibition on riding in a massed group.

- Over two hundred rides throughout May's annual Bike Month NYC, which is co-produced by the NYC Department of Transportation and Transportation Alternatives, with support from the NYPD, NYC Parks and Planning Departments, City Hall and all five borough presidents. Bike Month NYC features bike rides organized and led by bicycle clubs and community groups.
- The NYC Century Bike Tour produced by Transportation Alternatives. Started in 1989, the NYC Century Bike Tour is held on the second Sunday in September and attracts 5,000 riders to an open street ride, coordinated, but without a parade permit, with the NYPD, NYC Department of Transportation and the Parks Department. The event is permitted to use parks by the NYC Parks Department. It is also featured in the City of New York's "Bicycle Master Plan" as a key part of the City's "Comprehensive Bicycle Program" to encourage more New Yorkers to ride bikes.

In respect to permitting, the ideology of many of these rides is similar to that of Critical Mass: organizers and participants are frequently opposed to applying for permits because under applicable law bicyclists have the same rights to travel on roadways as motorists, and because a major part of the purpose of such rides is to convince the participants that bicyclists belong on city streets and that riding on city streets is a safe, fun and liberating experience.

Imposing a permit requirement on group rides would discourage the ride leaders from organizing these rides and reduce bicycle riding in New York City. A permit requirement would require organizers to formalize their routes, plan the details of the ride and seek approval far in advance of the date of the ride, and force the organizers to deal with the city bureaucracy, adding layers of hassle and delay sufficient to put off all but the most determined of organizers. Participants in the informal rides described above might also begin to perceive that riding in groups without approval is illegal, and avoid the rides for that reason even if the organizers went through the trouble of following all the required procedures.

An injunction requiring that Critical Mass acquire permits is not a necessity to ensure that riders abide by the traffic laws. The danger of the City's request is that it may convince many New Yorkers that bicycling in New York is subject to the discretionary control of the permit-granting authorities and of officers on the street, armed with not just the traffic laws but also the court's contempt power. Unfortunately, the practical effect will be to convince a multitude of other bicycle riders and organizers of group rides to simply stay home.

CONCLUSION

Section 16-122(b) of the New York City Administrative Code should not apply to locked bicycles. It is clear that the intent of this law was to keep sidewalks clear of obstructions caused by commercial boxes, barrels and other goods, and to address the proliferation of abandoned and stripped cars in the city. Given the extreme shortage of bike racks in New York City, applying it to bicycles would significantly reduce the number of New Yorkers who ride bikes each day because they would have very limited lawful bike parking places.

Imposing a permit requirement is not necessary for the City's goal of ensuring that Critical Mass riders obey traffic laws. The City already has sufficient capabilities to penalize bicyclists who violate applicable traffic laws. Furthermore, by decreasing the ease and convenience of bicycling, a permit requirement for group bicycle rides would drastically reduce the number of rides that take place each year and the number of New Yorkers that ride bikes.

Respectfully submitted,

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