



# OREGON PEDESTRIAN LAW GUIDE 2.0

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**CHAPTER 4C  
PEDESTRIANS**

*By: Robert C. Kline, Jr.*

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### **I. INTRODUCTION**

This chapter addresses pedestrians injured by motor vehicles. The starting point for all such claims is the Oregon Vehicle Code. The Code establishes the rights and obligations of pedestrians and drivers of motor vehicles. Applicable provisions include ORS 801 (definitions), ORS 811 (duties of drivers), and ORS 814 (duties of pedestrians). Case decisions provide another source of law, but the careful practitioner will consider whether cases—particularly older decisions—remain viable in light of the current version of the Vehicle Code.

Local rules also need to be considered. For example, the Portland City Code provides that pedestrians must use a crosswalk if there is one available within 150 feet.<sup>1</sup>

The Vehicle Code applies to private property where the property is open to motor vehicle use by the general public and falls under the broad definition of “highway” in ORS 801.305(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.” Under ORS 801.045, owners of private property may establish their own requirements for drivers and pedestrians. Examples include stop signs and marked crosswalks in parking areas adjacent to shopping malls.

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<sup>1</sup> Portland City Code (PCC) 16.70.210; 16.90.085 (defining “crosswalk”).

This chapter starts out by addressing what constitutes a pedestrian and the obligation of both pedestrians and motorists to use due care. Section III addresses crosswalks. Pedestrians and sidewalks are covered in Section IV. Roadway shoulders are addressed in Section V. Section VI explores the requirements that apply to pedestrians using the roadway. Section VII addresses other situations involving pedestrians—the driver’s obligation to stop for blind pedestrians, safety zones set aside for exclusive pedestrian use, and traffic patrol members directing students entering a crosswalk. Because pedestrian rights and obligations are defined in great detail in the Vehicle Code, the applicable sections are reproduced in Section VIII. Local rules in some of the more populous areas of Oregon are set forth in Section IX. Personal injury protection (“PIP”), uninsured (“UM”), and underinsured (“UIM”) insurance considerations are addressed in Section X. Section XI discusses roadway authority liability considerations. Finally, Section XII examines current trends in pedestrian advocacy.

Claims involving pedestrians are very fact specific. Liability often is disputed. Thorough investigation and documentation of all the facts is essential. For more about investigating collisions, see Chapter 9, *Investigation* by Nathan S. Sosa & Laura Polster. Pedestrian claims frequently require assistance from a crash reconstruction expert, a topic that is addressed in Chapter 43, *Accident Reconstruction and Bio-Mechanical Testimony*, by Devin Robinson.

## **II. PEDESTRIAN STATUS AND DUTIES**

### **2.1 Definition of a Pedestrian**

When there is a dispute regarding liability involving a motor vehicle and a pedestrian, it is first necessary to determine whether the injured person was a pedestrian. Under ORS 801.385, a “pedestrian” means “any person afoot or confined in a wheelchair.” This broad definition appears to cover persons running, walking or jogging, and persons travelling on roller skates, skateboards, or roller blades.

As discussed in the next section, bicyclists are regulated both as pedestrians and drivers of motor vehicles.

A person operating a motorized wheelchair in a crosswalk is a pedestrian and not the driver of a motor vehicle for purposes of the DUII statutes.<sup>2</sup>

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<sup>2</sup> *State v. Greene*, 283 Or App 120, 388 P.3d 1132, (2016).

“The vehicle code embodies a basic dichotomy between pedestrians and operators of vehicles. *See, e.g.*, ORS 811.028 (requiring drivers of vehicles to stop for pedestrians in crosswalks); ORS 811.025 (requiring drivers of vehicles to yield to pedestrians on sidewalks); ORS 814.010 (requiring pedestrians crossing at an intersection to obey pedestrian control signals, if they are present at the intersection, and not traffic control signals). *Compare* ORS 811.295 (requiring vehicles to drive on the right side of the road, with the flow of traffic) *with* ORS 814.070 (on a two-way highway with no sidewalks, requiring pedestrians to proceed on the far-left edge of the roadway, against the flow of traffic). That dichotomy evinces a legislative intention not to treat a person simultaneously as a pedestrian and the driver of a vehicle, and, accordingly, pedestrians generally are not subject to the provisions of the vehicle code that apply to vehicles and their operators.”<sup>3</sup>

ORS 814.500 treats motorized wheelchairs like bicycles when motorized wheelchairs are operated on bicycle lanes and paths and, therefore, operators of motorized wheelchairs may be subject to the DUII statutes when they use wheelchairs in those locations because bicycle riders are subject to the DUII statutes.<sup>4</sup>

A person working on a private survey crew is a pedestrian.<sup>5</sup> The fact that a worker is standing in the roadway, rather than moving, does not affect their status as a pedestrian; the court rejected the argument that the definition of pedestrian should be interpreted as meaning “a person afoot for the purposes of locomotion.”<sup>6</sup>

## **2.2 Bicyclists as Pedestrians**

Depending on the circumstances, bicyclists can be treated as pedestrians or drivers of motor vehicles. When bicyclists are riding on a sidewalk or in a crosswalk, they generally have the same rights and duties as pedestrians.<sup>7</sup> However, bicyclists are required to reduce speed on sidewalks and other places where the path for bicyclists or pedestrians approaches or crosses motor vehicle traffic. Under ORS 814.410(1)(d), it is unlawful for a bicyclist to travel 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.”

A bicyclist that rides faster than walking speed and enters a crosswalk, or any other location where there is motor vehicle traffic, also may run afoul of ORS 814.410(a). That

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<sup>3</sup> *Id.*, at 123.

<sup>4</sup> *Id.* at 123 n 6 [internal citation omitted].

<sup>5</sup> *Minato v. Ferrare*, 295 Or 22, 663 P.2d 1240 (1983).

<sup>6</sup> *Id.*

<sup>7</sup> ORS 814.410(2).

provision makes it unlawful for a bicyclist “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.” Since bicyclists have the same duties as pedestrians, they also are subject to ORS 814.040(a) which contains virtually identical language making it unlawful for a pedestrian to “suddenly leave[] a curb or other place of safety and move[] into the path of a vehicle that is so close to constitute an immediate hazard.”

Bicyclists riding on the road generally have to follow the same rules as drivers of motor vehicles. ORS 801.026(6) provides: “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.” ORS 814.400, in turn, states that bicyclists riding “upon a public way” generally have the same rights and obligations as motorists.

### **2.3 Duty to Use Due Care**

Both pedestrians and motorists have a duty to use 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.”<sup>8</sup> In a case addressing pedestrians’ rights inside and outside of a crosswalk, the Oregon Supreme Court stated: “The statutes are clear. Plaintiff has the right-of-way only if within the crosswalk. Otherwise, the motorist has the right-of-way. No matter which party has the right-of-way, however, each is required \* \* \* to exercise due care.”<sup>9</sup>

The Oregon Vehicle Code addresses how a pedestrian’s general duty to exercise due care applies in a variety of specific situations. That includes the obligation of a pedestrian, for example, to obey traffic control devices, see Section 3.2.1 below, and to walk on the sidewalk—if a useable one is available—rather than in the roadway, see Section VI below.

As with other allegations of comparative fault, careful consideration should be given to jury instructions to avoid the suggestion that if a pedestrian violates ORS 811.005, such violation excuses the defendant from any liability because the pedestrian assumed the risk of injury.<sup>10</sup>

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<sup>8</sup> ORS 811.005.

<sup>9</sup> *Carter v. Mote*, 285 Or 275, 289, 590 P.2d 1214 (1979) (interpreting similarly worded statute, ORS 483.210(5), which has since been repealed); *See also Leite v. Sambo's Restaurants, Inc.*, 264 Or 498, 504, 506 P.2d 176, (1973) (“While using the streets, both driver and pedestrian remain subject to a duty to exercise due care.” (also interpreting ORS 483.210)).

<sup>10</sup> *See* Section 2.4, above; *Leonard v. Moran Foods, Inc.*, 269 Or App 112, 132, 343 P.3d 693 (2015)(citing *Vandeverre-Pratt v. Portland Habilitation Center*, 242 Or App 554, 259 P.3d (2011)).

Additionally, the pedestrian’s lawyer in a given case may wish to argue against instructing the jury at all about a general duty to exercise due care when the vehicle code specifies the pedestrian’s responsibilities in a specific instance such as, for example, to not “suddenly leave[] a curb or other place of safety and move[] into the path of a vehicle that is so close to constitute an immediate hazard” under ORS 814.040(1)(a). A jury instruction about the general duty to exercise due care could lead the jury to consider circumstances that are not relevant to the determination as to whether, in this example, the pedestrian violated ORS 814.040(1)(a). Expect the defense lawyer to disagree and ask the court to instruct the jury about the general duty to use due care under ORS 811.005.

#### **2.4 Duty to Maintain Lookout**

Oregon courts seem to have recognized a common law duty for pedestrians to maintain a lookout for vehicles upon the roadway.<sup>11</sup> Whether those cases remain good law needs to be analyzed with respect to the current version of the Vehicle Code.

Under ORS 814.040(1)(a), pedestrians have an obligation to look out for vehicles that constitute an “immediate hazard” before stepping off a curb or other place of safety and proceeding into traffic.<sup>12</sup> Additionally, every person has a right to assume that others will obey the law, unless and until that person knows or should know otherwise.<sup>13</sup> Therefore, a pedestrian is entitled to expect, for example, that when he or she is “crossing the roadway in a crosswalk,” vehicle drivers will “stop and remain stopped” for the pedestrian to cross.<sup>14</sup> A jury instruction on a general common law duty for pedestrians to maintain a lookout may not be proper given these and other provisions of the Vehicle Code that address a pedestrian’s obligation to keep a lookout in specific circumstances. In *Leonard v. Moran Foods, Inc.*, the Court of Appeals held that the trial court did not err in declining to instruct the jury that the decedent pedestrian had a common law obligation to maintain a reasonable lookout. The court held that the instruction requested by defendants “erroneously implied to the jury that a plaintiff can assume the risk of a defendant’s

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<sup>11</sup> *Welcome v. Nelson*, 265 Or 37, 40, 507 P.2d 37 (1973) (upholding directed verdict on contributory negligence claim of pedestrian where “the jury could only find that the plaintiff walked into the side of defendants’ vehicle and that it was light and plaintiff testified he could see several blocks in the traveling lane of the street, the lane where defendants were driving” and “either the plaintiff must not have looked before he stepped into defendants’ car or, if he did look, he failed to see what a reasonably prudent person would have seen.”); *Hoagland v. Solie*, 247 Or 38, 41, 427 P.2d 109 (1967) (jury instructed pedestrian had a duty to keep a lookout and should have been instructed that driver had the same duty).

<sup>12</sup> See Section 3.2.2.

<sup>13</sup> *Smith v. Holst*, 275 Or 29, 33, 549 P.2d 671 (1976).

<sup>14</sup> ORS 811.028(1); See also, Section 3.3A.

negligence, contrary to the legislature’s abolition of the doctrine of implied assumption of risk.”<sup>15</sup>

Under common law, when a pedestrian is in a place that he or she has a right to be, the pedestrian generally is under no obligation to turn and look for vehicles approaching from the rear.<sup>16</sup>

### **III. CROSSWALKS**

#### **3.1 Definition of a Crosswalk**

The starting point for evaluating pedestrian claims involving a crosswalk is the definition of a “crosswalk.” Under ORS 801.220, a crosswalk is any portion of a roadway at an intersection or elsewhere that is distinctly indicated for pedestrian use by lines or other markings. When such a marked crosswalk exists at an intersection, pedestrians must use it to cross the roadway.

When no marked crosswalk exists at an intersection, one is created by operation of law under ORS 801.220(1). The technical process for determining the precise dimensions of an unmarked crosswalk is described in detail in the statute and will not be repeated here. In general, unmarked crosswalks are at least six feet wide, but no more than 20 feet wide. Note that unmarked crosswalks are not necessarily perpendicular to the roadway.<sup>17</sup>

The important point to remember about ORS 801.220 is that every intersection contains a pedestrian crosswalk, whether or not it is so marked, and whether or not there is a traffic control device. Local rules also may define crosswalks and the obligation of pedestrians to use them. For example, see Portland City Code 16.90.085.

#### **3.2 Pedestrian Duties**

##### **3.2.1 Obey Traffic Control Devices**

Under ORS 814.010, pedestrians must obey “traffic control devices.” Such devices are defined at ORS 801.540 and include traffic signals and stop signs. Pedestrians may proceed

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<sup>15</sup> *Leonard*, 53 Or App at 132 (citing *Vandeverre-Pratt* 242 Or App 554).

<sup>16</sup> *Herinckx v. Hagen*, 44 Or App 437, 440, 605 P.2d 1372 (1980) (pedestrians were under no duty to keep a lookout over their shoulders as they lawfully walked down the street; a pedestrian, like a bicyclist, “has the right to assume, until he knows to the contrary, or until by the exercise of due care on his part he should and would have known to the contrary, that those coming from the rear will observe him and take such precautions as may be necessary to avoid colliding with him, and to act accordingly. Neither a pedestrian nor a bicyclist is required to take to the ditch every time a motor vehicle approaches from behind.”).

<sup>17</sup> See, e.g., *Howell v. Boyle*, 408 Fed Appx 121, 2011 WL 121630 (9th Cir. Jan. 14, 2011) (unmarked crosswalk extended diagonally across a highway); For a case discussing how an unmarked crosswalk is to be determined under a predecessor to the current statute, see *Rosen v. Wright*, 74 Or App 83, 701 P.2d 785 (1985).



across the roadway in a marked or unmarked crosswalk when facing a traffic control device with a green light, or a traffic control device with a green arrow signal light. Pedestrians may not enter the roadway—whether or not in a marked or unmarked crosswalk—when facing a traffic control device with a steady yellow light or a steady red light.

When a pedestrian is facing a pedestrian control signal showing the word “Walk,” the pedestrian may proceed across the roadway in the direction of the signal. Unlike the provision applying to “traffic control devices,” the provision applying to “pedestrian control signals” does not specify whether or not pedestrians must stay within a marked or unmarked crosswalk when proceeding across the roadway; ORS 814.010(6)(a) states that when facing a “Walk” signal, pedestrians “may proceed across the roadway.” Pedestrians may not start to cross the roadway in the direction of a signal showing a “Wait” or “Don’t Walk” symbol. A pedestrian who has started crossing the roadway on a “Walk” signal must proceed “with dispatch” to a sidewalk or safety island if the signal turns to “Wait” or “Don’t Walk.”

“Jaywalking” is prohibited under ORS 814.020, which makes it unlawful for a pedestrian to disobey a traffic control device described in ORS 814.010 or any other traffic control device specifically applicable to a pedestrian.

### **3.2.2 Yield to Vehicles**

In some motor vehicle collisions involving pedestrians, the driver asserts that the pedestrian darted out into the street without warning in front of the driver’s vehicle. Even if the pedestrian is legally entitled to cross the roadway, ORS 814.040(1)(a) provides that it is unlawful for a pedestrian to “suddenly leave[] a curb or other place of safety and move[] into the path of a vehicle that is so close to constitute an immediate hazard.” This provision raises difficult issues of timing for the pedestrian who seeks to step off a curb and lawfully proceed across the roadway in a crosswalk when heavy traffic is present. Whether the vehicle moving in the direction of the pedestrian is “so close as to constitute an immediate hazard” ultimately depends on how far away the vehicle was when the pedestrian stepped off the curb, the speed of the vehicle, and the driver’s reaction time. Expert testimony often is required to address this issue.

Note that ORS 814.040(1)(a) does not specifically address crosswalks and, therefore, applies any time a pedestrian embarks to cross the roadway, whether inside or outside of a crosswalk. When a pedestrian crosses the roadway at any point other than a crosswalk, whether marked or unmarked, ORS 814.040(1)(b) requires the pedestrian to yield the right of way to

motor vehicles upon the roadway. Indeed, the default law is that “except as otherwise provided under the vehicle code,” pedestrians must yield the right of way to all vehicles upon the roadway.<sup>18</sup> The law is sometimes misunderstood by pedestrians who believe they always have the right of way any time they are on the roadway.

As with other allegations of comparative fault, such as a common law duty—if any—to maintain a lookout, careful consideration needs to be given to jury instructions to avoid the suggestion that if a pedestrian violates ORS 814.040(1), such violation excuses the defendant from any liability because the pedestrian assumed the risk of injury.<sup>19</sup>

ORS 814.050 requires pedestrians to yield to an emergency vehicle.

### **3.3 Driver Duties**

#### **3.3.1 Stop and Remain Stopped for Pedestrians in Crosswalks**

ORS 811.028 governs the requirement for drivers to stop and remain stopped for pedestrians in crosswalks. Under ORS 811.028(4), a pedestrian is crossing the roadway in a crosswalk when any part or “extension” of the pedestrian moves onto the roadway with the intent to proceed. An extension includes, but is not limited to, any part of the pedestrian’s body, or a wheelchair, cane, crutch, or bicycle.

ORS 811.028(1) requires a driver to stop and remain stopped for a pedestrian crossing the roadway in a marked or unmarked crosswalk when the pedestrian is located in the driver’s lane or the lane adjacent to the driver’s lane.

Separate requirements apply when a driver is turning at an intersection. When the driver is turning at an intersection, the driver must stop and remain stopped for a pedestrian crossing the roadway in a crosswalk in the lane into which the driver is turning. Additionally, if the intersection at which the driver is turning has a traffic light, the driver must also stop and remain stopped for a pedestrian located less than six feet from the lane into which the driver is turning. By its plain language, this rule, ORS 811.028(1)(b)(E), appears to include a pedestrian on the sidewalk or other locations not in the roadway provided the pedestrian is less than six feet from the lane into which the driver is turning. If there is no traffic light at the intersection, the driver

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<sup>18</sup> ORS 814.040(1)(c).

<sup>19</sup> See Section 2.4; *Leonard*, 53 Or App at 132 (citing *Vandeverre-Pratt* 242 Or App 554)(“[I]t is essential that the jury understand that it should consider the plaintiff’s duty only as part of comparing the plaintiff’s negligence to the defendant’s, which the jury can do only after first finding that the defendant was negligent. Otherwise, the instruction has the potential to suggest, improperly, that the plaintiff’s failure to maintain a proper lookout excuses the defendant from any liability because the plaintiff assumed the risk of injury.”). [internal citations omitted].

must also stop and remain stopped for a pedestrian in a lane adjacent to the lane in which the driver is turning.

What is a driver's obligation when a pedestrian unlawfully proceeds across the roadway in a crosswalk against a "Don't Walk" signal? At first blush, ORS 811.028(1)(a) would appear not to require a driver to stop and remain stopped for a pedestrian when the pedestrian is not "[p]roceeding in accordance with a traffic control device as provided under ORS 814.010." However, regardless of whether the pedestrian is "[p]roceeding in accordance with a traffic control device as provided under ORS 814.010", the rest of the statute following the word "or" after this phrase requires a driver to stop and remain stopped for a pedestrian in a crosswalk in the specified locations. Therefore, the requirement for motorists to stop and remain stopped for a pedestrian in a crosswalk is not affected by the fact that the pedestrian is crossing unlawfully against a "Don't Walk" signal. Motorists, of course, also must "exercise due care concerning pedestrians."<sup>20</sup>

### **3.3.2 Not Pass Vehicles Stopped at Crosswalks**

Under ORS 811.020, it is unlawful for a driver to approach from the rear and pass a vehicle that is stopped at a marked or unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway.

## **IV. PEDESTRIANS AND SIDEWALKS**

Under ORS 811.025, drivers must yield the right of way to a pedestrian on a sidewalk. As would be expected, pedestrians have the right of way when a driver crosses over a sidewalk to get into or out of a roadway. Moreover, ORS 811.505(1)(a) requires a driver to stop before driving onto a sidewalk or sidewalk area when the driver is emerging from an alley, building, private road, or driveway. If there is no sidewalk or sidewalk area, "the driver must stop at the point nearest the roadway to be entered where the driver has a view of approaching traffic."<sup>21</sup>

The definition of what constitutes a sidewalk is broader than commonly envisioned. Under ORS 801.485, a "'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.

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<sup>20</sup> ORS 811.005.

<sup>21</sup> ORS 811.505(1)(b).

(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.

A “highway,” in turn, is defined as “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.”<sup>22</sup>

Therefore every public roadway—whether paved or unpaved—has a sidewalk by operation of law in the area “capable of being used by a pedestrian” between the roadway and the adjacent property line. If the roadway has a shoulder (see Section V below regarding shoulders) the sidewalk is in the area between the outside lateral line of the shoulder and the adjacent property line. If the roadway has no shoulder, the sidewalk is in the area between the lateral line of the roadway and the adjacent property line. There is no requirement that a sidewalk be designated as such, paved or bordered by a curb, to constitute a sidewalk.

To qualify as a sidewalk, the area in question must be “capable of being used by a pedestrian.” This is an expansive definition that arguably applies to areas that are not commonly used, or even intended to be used, by pedestrians. In areas not capable of being used by pedestrians—such as where the roadway is adjacent to a cliff or an overpass abutment—no sidewalk exists.

As noted above, pedestrians have the right of way on a sidewalk. In order to prove that the pedestrian plaintiff was on the sidewalk when hit by the defendant driver, it is necessary for the plaintiff to put on proof regarding the physical boundaries of the sidewalk. For example, in *Nyman v. Lang*, the Oregon Court of Appeals held that the plaintiff’s requested jury instruction regarding a pedestrian’s right of way on a sidewalk was properly refused where there was no evidence establishing the adjacent property line.<sup>23</sup>

Under ORS 811.505(1), “ \* \* \* a ‘driveway’ is a private way of access that allows drivers to reach a private place from a public road.”<sup>24</sup> The statute applies to motorists exiting from parking lots.<sup>25</sup>

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<sup>22</sup> ORS 801.305.

<sup>23</sup> *Nyman v. Lang*, 81 Or App 361, 365-66, 724 P.2d 944 (1986).

<sup>24</sup> *State v. Jones*, 286 Or App 562, 401 P.3d 271 (2017).

<sup>25</sup> *Id.*

## V. PEDESTRIANS AND SHOULDERS

Roadway shoulders have a unique status. Under ORS 801.480, a “shoulder” is defined as “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.” Neither drivers nor pedestrians have the exclusive right to use—nor the right of way—on a shoulder. In *Jefferis v. White*, the Oregon Court of Appeals found that a pedestrian does not have the right of way on a shoulder.<sup>26</sup> The court reasoned that because the definition of shoulder contemplates use by both drivers and pedestrians, neither the driver nor the pedestrian is given preference.<sup>27</sup>

Note that a “roadway” is defined as “the portion of a highway that is improved, designed or ordinarily used for vehicular travel, exclusive of the shoulder.”<sup>28</sup> The following diagrams illustrate how the various elements work together:

Figure 5.1 – Roadway with Shoulder

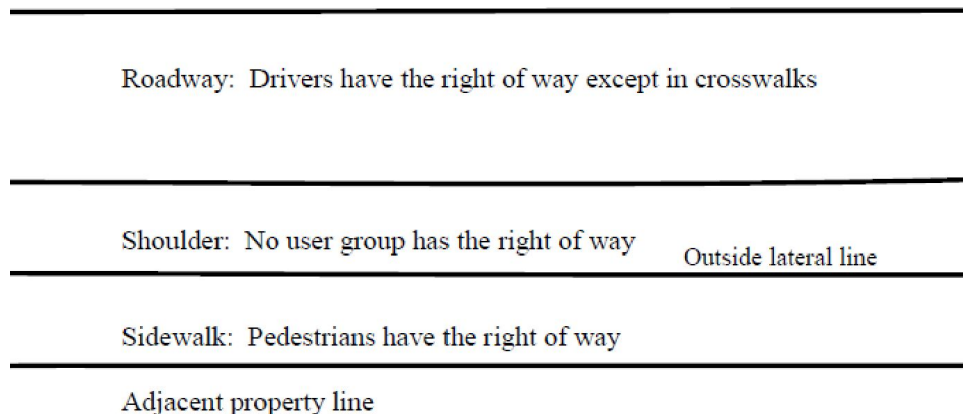
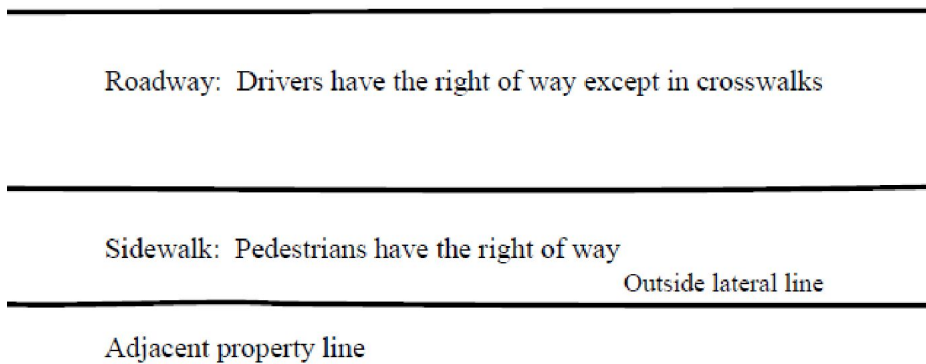


Figure 5.2 – Roadway without Shoulder

<sup>26</sup> *Jefferis v. White*, 39 Or App 167, 170, 591 P.2d 766 (1979).

<sup>27</sup> *Id.*

<sup>28</sup> ORS 801.450.



The diagrams illustrate that the roadway ends where the shoulder begins, if there is a shoulder. The shoulder ends at the outside lateral line where the sidewalk begins, if there is a sidewalk.<sup>29</sup> The sidewalk runs to the adjacent property line.

On the roadway, drivers have the right of way, except at crosswalks.<sup>30</sup> Shoulders are a free-for-all where no user group has a preferential right. If there is a sidewalk, pedestrians have the right of way.<sup>31</sup>

The Vehicle Code establishes detailed requirements regarding where and how pedestrians must proceed on the shoulder when one is available. These requirements are discussed in the next section.

## VI. PEDESTRIANS ON THE ROADWAY

The Vehicle Code governs where and how pedestrians may walk on a roadway. Pedestrians may not walk on the roadway if there is an adjacent usable sidewalk or shoulder.<sup>32</sup> A sidewalk or shoulder ostensibly is not usable if it is too difficult or hazardous to walk upon. Examples arguably include steep or irregular surfaces, large potholes, or significant standing or moving water.

ORS 814.070 provides that:

“(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:

<sup>29</sup>See Section IV above.

<sup>30</sup> See Section 3.2.2 above.

<sup>31</sup> See Section IV.

<sup>32</sup> ORS 814.070(1)(a).

“(a)Takes a position upon or proceeds along and upon the roadway where there is an adjacent usable sidewalk or shoulder.”

Under ORS 814.070(1)(a), “proceeding along” a highway means “in a line parallel with the length or direction of \* \* \* [as] distinguished from *across*. \* \* \* \* Thus, proceeding ‘along’ a roadway is not synonymous with proceeding ‘across’ a roadway.”<sup>33</sup> ORS 814.070 does not address a pedestrian’s obligations while crossing a roadway.<sup>34</sup> Instead, “ORS 814.040 concerns a pedestrian’s obligation to yield to vehicles when *crossing* a roadway.”<sup>35</sup>

If there is an adjacent shoulder on either side of roadway, pedestrians must walk on the shoulder as far as practicable from the roadway edge.<sup>36</sup>

Except in the case of a divided highway, pedestrians must proceed upon the left shoulder (i.e., facing traffic) as far as practicable from the highway edge on a two-way highway that has no sidewalk and that does have an adjacent shoulder area.<sup>37</sup> An exception is provided for hitchhikers standing or walking on the right shoulder provided they face oncoming vehicles in the adjacent lane. By its plain language, the exception, ORS 814.070(1)(c)(A), requires hitchhikers to walk backwards.

On a divided highway that has no sidewalk but does have a shoulder, pedestrians must proceed on the right highway shoulder as far as practicable from roadway edge.<sup>38</sup>

If the highway has neither a sidewalk nor a shoulder available, pedestrians must proceed as near as practicable to the outside edge of the roadway. If such a highway is two way, pedestrians may proceed only on the left side.<sup>39</sup>

There are two exceptions to the requirements of ORS 814.070. One occurs when the pedestrian has a permit or belongs to a group that obtains a permit in advance and complies with other requirements such as posting advance warning signs and wearing high-visibility safety apparel.<sup>40</sup> The other exception permits pedestrians to walk on a narrow residential roadway if the pedestrian does not create a traffic hazard, and signs are posted giving notice that pedestrians may be present.<sup>41</sup>

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<sup>33</sup> *State v. Tyler*, 285 Or App 101, 104, 395 P.3d 69 (2017) [internal citation omitted].

<sup>34</sup> *Id.* at 106.

<sup>35</sup> *Id.* [emphasis in original].

<sup>36</sup> ORS 814.070(1)(b).

<sup>37</sup> ORS 814.070(1)(c).

<sup>38</sup> ORS 814.070(1)(d).

<sup>39</sup> ORS 814.070(1)(e).

<sup>40</sup> ORS 814.070(3).

<sup>41</sup> ORS 814.070(4).

Note that under ORS 814.100, drivers and passengers of disabled vehicles stopped on a freeway where pedestrian traffic otherwise is prohibited may walk to the nearest exit to access “telephone or motor vehicle repair services.” Pedestrians must walk on the side of the freeway upon which the vehicle is disabled.

In the absence of some justifiable circumstance, due care ordinarily requires that the plaintiff pedestrian comply with ORS 814.070. If the pedestrian plaintiff was not in the correct location required under ORS 814.070 when he or she was hit by the defendant driver, the defendant can argue that the plaintiff was comparatively negligent for violating the statute. Compliance with ORS 814.070 does not change the rules pertaining to whether the driver or pedestrian has the right of way. Motorists have the right of way on the roadway, except at crosswalks.<sup>42</sup> No user group has the right of way on shoulders.<sup>43</sup> Pedestrians have the right of way on sidewalks.<sup>44</sup> Notwithstanding the foregoing rules, motorists have a duty to exercise due care for the safety of pedestrians, and pedestrians have a duty to exercise due care for their own safety.<sup>45</sup>

## **VII. OTHER SITUATIONS INVOLVING PEDESTRIANS**

### **7.1 Driver Duty to Stop and Remain Stopped for Blind Pedestrians**

Under ORS 811.035(1)(a), a driver must stop and remain stopped for a pedestrian who is blind, carrying a white cane, or accompanied by a dog guide, and crossing or about to cross a roadway. Note that this requirement applies when a blind person is crossing the roadway in any location, not just in crosswalks.

When a blind pedestrian has entered the roadway in a location that is regulated by a traffic control device, and the pedestrian is carrying a white cane or accompanied by a dog guide, the driver must stop and remain stopped until the pedestrian clears the roadway.<sup>46</sup> The latter provision applies notwithstanding any other provisions of the Vehicle Code.<sup>47</sup> Therefore, the driver in such a situation must wait for the blind pedestrian to exit the roadway even if, for

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<sup>42</sup> See Section 3.2.2 above.

<sup>43</sup> See Section V, above.

<sup>44</sup> See Section IV above.

<sup>45</sup> See Section 2.3 above.

<sup>46</sup> ORS 811.035(1)(b).

<sup>47</sup> *Id.*



example, the driver is facing a green light that otherwise would indicate the driver may proceed through an intersection.

A blind pedestrian is considered to be crossing the roadway “when any part or extension of the pedestrian, including but not limited to any part of the pedestrian’s body, wheelchair, cane, crutch, bicycle or leashed animal, moves onto the roadway with the intent to proceed.”<sup>48</sup> The terms “guide dog,” “blind,” and “white cane” are defined at ORS 814.110.

## **7.2 Safety Zones Set Aside for Exclusive Pedestrian Use**

ORS 811.030 prohibits a driver from driving in a designated safety zone officially set apart within a roadway for the exclusive use of pedestrians. The safety zone must be marked by adequate signs that are plainly visible at all times. In *State v. Bainbridge*, the Oregon Court of Appeals found that the evidence was insufficient to establish a violation of ORS 811.030 where at least one vehicle was allowed to enter a work area. Therefore, the work area was not “set apart...for the exclusive use of pedestrians” as the definition of a “safety zone” requires.<sup>49</sup>

ORS 811.230 et seq. establishes requirements for highway work zones. Under ORS 811.233, drivers in a highway work zone must yield the right of way to a highway worker who is a pedestrian.

## **7.3 Traffic Patrol Directing Students Going to or From School**

Under ORS 811.015, a driver must stop and remain stopped for students who are in or entering a crosswalk when “a traffic patrol member makes a cautionary sign or signal to indicate that students have entered or are about to enter the crosswalk.” A driver must also stop and yield the right of way to a traffic patrol member who has entered the crosswalk to direct students who have entered or are about to enter the crosswalk and “is carrying a flag or wearing something that identifies the person as a traffic patrol member.”<sup>50</sup>

Pursuant to ORS 811.017(2) “traffic patrol” has the meaning given to that term in ORS 339.650, which provides: “‘traffic patrol’ means one or more individuals appointed by a public, private or parochial school to protect pupils in their crossing of streets or highways on their way to or from the school by directing the pupils or by cautioning vehicle operators.”

## **VIII. TRAFFIC LAWS APPLYING TO PEDESTRIANS**

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<sup>48</sup> ORS 811.035(3).

<sup>49</sup> *State v. Bainbridge*, 230 Or App 500, 505, 216 P.3d 388 (2009).

<sup>50</sup> ORS 811.017.

### **339.650 Traffic patrol defined for ORS 339.650 to 339.665.**

As used in ORS 339.650 to 339.665 “traffic patrol” means one or more individuals appointed by a public, private or parochial school to protect pupils in their crossing of streets or highways on their way to or from the school by directing the pupils or by cautioning vehicle operators. [Formerly 336.450]

### **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:
  - (a) They are within the immediate construction project as described in the governmental agency contract, if there is a contract; and
  - (b) The work is being done in an area that is signed in accordance with the manual adopted under ORS 810.200.
- (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]

#### **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]

#### **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]

**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]

**801.450 “Roadway.”**

“Roadway” means the portion of a highway that is improved, designed or ordinarily used for vehicular travel, exclusive of the shoulder. In the event a highway includes two or more separate roadways the term “roadway” shall refer to any such roadway separately, but not to all such roadways collectively. [1983 c.338 §83]

**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]

**801.540 “Traffic control device.”**

“Traffic control device” means:

- (1) Any sign, signal, marking or device placed, operated or erected by authority under ORS 810.210 for the purpose of guiding, directing, warning or regulating traffic.
- (2) Any device that remotely controls by electrical, electronic, sound or light signal the operation of any device identified in subsection (1) of this section and installed or operated under authority of ORS 810.210.
- (3) Any stop sign that complies with specifications adopted under ORS 810.200 that is held or erected by a member of a highway maintenance or construction crew working in the highway. [1983 c.338 §99; 1993 c.203 §1; 1993 c.522 §1]

**801.608 “Vulnerable user of a public way.”**

“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;
- (2) A skateboard;
- (3) Roller skates;
- (4) In-line skates;
- (5) A scooter; or
- (6) A bicycle. [2007 c.784 §2; 2009 c.301 §1]

**810.030 Imposition of restrictions on highway use; grounds; procedure; penalties.**

- (1) A road authority may impose restrictions described under this section on its own highways as the road authority determines necessary to do any of the following:
  - (a) Protect any highway or section of highway from being unduly damaged.
  - (b) Protect the interest and safety of the general public.
- (2) Restrictions that may be imposed under this section include any of the following:
  - (a) Prohibition of the operation of any or all vehicles or any class or kind of vehicle.
  - (b) Imposing limits on any weight or dimension of any vehicle or combination of vehicles.

- (c) Imposing any other restrictions that the road authority determines necessary to achieve the purposes of this section. This paragraph does not grant authority to impose speed restrictions.
- (3) Any restrictions or limitations imposed under this section must be imposed by proper order. The restrictions or limitations are effective when appropriate signs giving notice of the restrictions or limitations are erected. A sign giving notice of a restriction or limitation in an order shall be maintained in a conspicuous manner and shall be placed at each end of the highway or section of highway affected by the order and at such other places as is necessary to inform the public.
- (4) Penalties are provided under ORS 818.130 for violation of restrictions imposed under this section. [1983 c.338 §147; 1985 c.16 §46]

**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]

**811.017 Failure to yield to traffic patrol member; penalty.**

- (1) The driver of a vehicle commits the offense of failure to yield to a traffic patrol member if the driver fails to stop and yield the right of way to a traffic patrol member who:
- (a) Has entered a crosswalk for the purpose of directing students who have entered or are about to enter the crosswalk; and
  - (b) Is carrying a flag or wearing something that identifies the person as a traffic patrol member.
- (2) For purposes of this section, "traffic patrol" has the meaning given that term in ORS 339.650.
- (3) The offense described in this section, failure to yield to a traffic patrol member, is a Class A traffic violation. [2003 c.557 §2]

**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]

**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]

**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; 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) For the purposes of this section, a pedestrian is crossing the roadway in a crosswalk when any part or extension of the pedestrian, including but not limited to any part of the pedestrian's body, wheelchair, cane, crutch or bicycle, moves onto the roadway in a crosswalk with the intent to proceed.
- (5) 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; 2011 c.507 §1]

**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.

**811.030 Driving through safety zone; penalty.**

- (1) The driver of a vehicle commits the offense of driving through a safety zone if the driver at any time drives through or within any 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.
- (2) The offense described in this section, driving through a safety zone, is a Class B traffic violation. [1983 c.338 §548; 1995 c.383 §43]

**811.035 Failure to stop and remain stopped for pedestrian who is blind.**

- (1) The driver of a vehicle commits the offense of failure to stop and remain stopped for a pedestrian who is blind if the driver violates any of the following:
- (a) A driver approaching a pedestrian who is blind or blind and deaf, who is carrying a white cane or accompanied by a dog guide, and 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 pedestrian who is blind or blind and deaf shall stop and remain stopped until the pedestrian has vacated the roadway if the 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.
- (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) For the purposes of this section, a pedestrian is crossing the roadway when any part or extension of the pedestrian, including but not limited to any part of the pedestrian's body, wheelchair, cane, crutch, bicycle or leashed animal, moves onto the roadway with the intent to proceed.



- (4) The offense described in this section, failure to stop and remain stopped for a pedestrian who is blind, is a Class B traffic violation. [1983 c.338 §549; 1985 c.16 §280; 2003 c.278 §3; 2007 c.70 §329; 2011 c.507 §2]

**811.135 Careless driving; penalty.**

- (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 (Length of community service sentence). The community service must include activities related to driver improvement and providing public education on traffic safety;
- (b) Order, 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 (Maximum fines); and
- (B) A suspension of driving privileges for one year as provided in ORS 809.280 (Department procedures following court order of suspension or revocation); 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 ordered 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) Order the penalties under subsection (3)(b) of this section.
- (5) When a court orders 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 (Department procedures following court order of suspension or revocation).

- (6) The police officer issuing the citation for an offense under this section shall note on the citation if the cited offense appears to have contributed to the serious physical injury or death of a vulnerable user of a public way. [1983 c.338 §570; 1995 c.383 §20; 2007 c.784 §3; 2011 c.355 §11; 2011 c.423 §1]

**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]

**811.230 Definitions; fine; notice.**

- (1) As used in ORS 811.230, 811.231, 811.232 and 811.233:
  - (a) “Flagger” means a person who controls the movement of vehicular traffic through construction projects using sign, hand or flag signals.
  - (b) “Highway work zone” means an area identified by advance warning where road construction, repair or maintenance work is being done by highway

workers on or adjacent to a highway, regardless of whether or not highway workers are actually present. As used in this paragraph, “road construction, repair or maintenance work” includes, but is not limited to, the setting up and dismantling of advance warning systems.

- (c) “Highway worker” means an employee of a government agency, private contractor or utility company working in a highway work zone.
- (2) (a) The presumptive fine for a person convicted of an offense that is listed in subsection (3)(a) or (b) of this section and that is committed in a highway work zone is the presumptive fine for the offense established under ORS 153.020.
  - (b) The minimum fine for a person convicted of a misdemeanor offense that is listed in subsection (3)(c) to (g) of this section and that is committed in a highway work zone is 20 percent of the maximum fine established for the offense.
  - (c) The minimum fine for a person convicted of a felony offense that is listed in subsection (3)(c) to (g) of this section and that is committed in a highway work zone is two percent of the maximum fine established for the offense.
- (3) This section applies to the following offenses if committed in a highway work zone:
    - (a) Class A or Class B traffic violations.
    - (b) Class C or Class D traffic violations related to exceeding a legal speed.
    - (c) Reckless driving, as defined in ORS 811.140.
    - (d) Driving while under the influence of intoxicants, as defined in ORS 813.010.
    - (e) Failure to perform the duties of a driver involved in an accident or collision, as described in ORS 811.700 or 811.705.
    - (f) Criminal driving while suspended or revoked, as defined in ORS 811.182.
    - (g) Fleeing or attempting to elude a police officer, as defined in ORS 811.540.
  - (4) When a highway work zone is created, the agency, contractor or company responsible for the work may post signs designed to give motorists notice of the provisions of this section. [1995 c.253 §2; 1997 c.843 §3; 1999 c.1051 §292; 2011 c.597 §114]

**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]

**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:
  - (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]

**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:

- (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]

**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. [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]

**814.070 Improper position upon or improperly proceeding along highway; exceptions; 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.
  - (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 who is obeying the rules of the Department of Transportation for picking up litter or removing noxious weeds 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 who is obeying the rules of the Department of Transportation for picking up litter or removing noxious weeds 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) A pedestrian does not commit the offense of pedestrian with improper position

upon or improperly proceeding along a highway if the pedestrian:

- (a) Does not impede traffic or create a traffic hazard;
  - (b) Posts advance warning signs in compliance with standards adopted by the Oregon Transportation Commission under ORS 810.200;
  - (c) Wears high-visibility safety apparel in compliance with standards adopted by the Oregon Transportation Commission under ORS 810.200; and
  - (d) Has a permit or belongs to a group that has a permit issued under ORS 814.072.
- (4) A pedestrian does not commit the offense of pedestrian with improper position upon or improperly proceeding along a highway when the pedestrian is on a narrow residential roadway if:
- (a) The pedestrian does not create a traffic hazard; and
  - (b) Signs are posted giving notice that pedestrians may be present upon or along the narrow residential roadway. Signs posted under this paragraph shall be posted at each end of the portion of the narrow residential roadway where pedestrians may be present.
- (5) 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; 2008 c.47 §§1,2; 2009 c.547 §§2,3; 2011 c.507 §3; 2013 c.474 §1]

#### **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 persons who are blind or who are blind and deaf.**

- (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) “Dog guide” means a dog that is wearing a dog guide harness and is trained to lead or guide a person who is blind.
  - (b) “Person who is blind” means a person who has 20/200 vision or less, or a visual field of 20 degrees or less.
  - (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 person who is blind or blind and deaf 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 person who is blind and deaf may use a white cane marked by a six-inch wide chartreuse colored strip at the tip end.
- (3) A pedestrian who is blind or blind and deaf and 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; 2007 c.70 §344]

#### **814.400 Application of vehicle laws to bicycles.**

- (1) Every person riding a bicycle upon a public way is subject to the provisions applicable to and has the same rights and duties as the driver of any other vehicle concerning operating on highways, vehicle equipment and abandoned vehicles, except:
  - (a) Those provisions which by their very nature can have no application.
  - (b) When otherwise specifically provided under the vehicle code.
- (2) Subject to the provisions of subsection (1) of this section:
  - (a) A bicycle is a vehicle for purposes of the vehicle code; and
  - (b) When the term “vehicle” is used the term shall be deemed to be applicable to bicycles.
- (3) The provisions of the vehicle code relating to the operation of bicycles do not relieve a bicyclist or motorist from the duty to exercise due care. [1983 c.338 §697; 1985 c.16 §335]

#### **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]

**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]

**734-020-0045 Prohibition of Non-Motorized Vehicles on Freeways.**

- (1) Bicycles and pedestrians as defined in ORS 801.150 and 801.385, are prohibited upon the following segments of freeways within the State of Oregon:
  - (a) Portland area:
    - (A) The Columbia River Highway No. 2 (Banfield/I-84) from its intersection with I-5, M.P. 0.00, to 238th Drive, M.P. 15.96;
    - (B) The Sunset Highway No. 47 easterly of the Jefferson Street Interchange, M.P. 73.35;
    - (C) Interstate 5 (Hwy. No. 1) northerly of the Beaverton - Tigard Highway Interchange, M.P. 292.20;
    - (D) Interstate 205 (Hwy. No. 64) northerly of the Overcrossing of the Oswego Highway No. 3, M.P. 8.82;
    - (E) Interstate 405 (Hwy. No. 61) in its entirety; and
    - (F) Lower Columbia Highway No. 2W from its intersection with I-405, M.P. 0.00, to 23rd Street, M.P. 1.99.

- (b) Medford area: Interstate 5 (Pacific Highway No. 1) from the South Medford Interchange, M.P. 27.16, to the North Medford Interchange, M.P. 30.29 (in Medford).
- (2) The closure of the above sections to bicycles and pedestrians shall become effective following the erection of adequate signing.
- (3) The prohibition of pedestrians from the above segments of freeways does not prohibit the driver and passengers of a disabled vehicle from walking to the nearest freeway exit in accordance with ORS 814.100.

## **IX. LOCAL RULES**

### **Beaverton Uniform Traffic Ordinance**

#### **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.

### **Gresham Revised Code**

#### **8.65.010 Pedestrians.**

- (1) Pedestrians shall cross a street at a right angle, unless crossing within an angled, marked crosswalk.
- (2) No person shall:
  - (a) cross a street other than within a crosswalk in blocks with marked crosswalks; or
  - (b) cross 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.

(Ord. No. 1700, Enacted, 03/03/2011)

#### **8.65.020 Driving upon a Sidewalk.**

- (1) No person shall operate or park a motorized vehicle upon a sidewalk, or roadside planting or median strip, except to cross at a permanent or temporary driveway.

(Ord. No. 1700, Enacted, 03/03/2011)

### **Eugene Traffic 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.)

## **Lake Oswego**

### **32.10.700 Crosswalks.**

1. No pedestrian shall cross a highway except at right angles of a continuation of a sidewalk of intersecting highways or at crosswalks designated by appropriate markings.
2. No pedestrian shall cross a highway at a closed crosswalk marked with official signs. Violation of this section is a Class C violation.

### **32.10.710 Use of Sidewalks.**

No pedestrian shall use any roadway for travel when an improved sidewalk abutting the same is available. Violation of this section is a Class C violation.

## **Milwaukie Municipal Code**

### **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 (150) 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 Code of Ordinances**

### **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.

## **City of Portland Code**

### **16.70.200 Pedestrians.**

#### **16.70.220 Must Cross at Right Angles.**

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

#### **16.70.210 Must Use Crosswalks.**

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

#### **16.70.230 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.

**16.70.810 Street Obstructions and Dangerous Conditions.**

(Added by Ordinance No. 176585, effective July 5, 2002.) No person, whether acting as private citizen, principal, employee or agent shall:

- A. Between the hours of sunset and sunrise, place or allow to remain on any street any obstruction, other than a lawfully parked vehicle or any permitted structure, unless a clearly displayed warning light or lights are:
  - 1. plainly visible for 200 feet in either direction parallel to the street and at least 25 feet in all other directions, and
  - 2. placed on the edge or side of the obstruction nearest the center of the street.
- B. At any time, create a dangerous condition on any street without erecting and maintaining a distinctly visible barricade which provides a clear indication of the danger and directs people safely around it; and/or
- C. Remove such a barricade from any street while the danger continues.

**16.90.085 Crosswalk.**

Any portion of a roadway at an inter-section 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:

- A. 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:

1. 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
  2. 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.
- B. If there is neither sidewalk nor shoulder, a crosswalk is the portion of the roadway at an intersection, measuring not less than 6 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.

Salem Revised Code

### **95.700 Pedestrian Interference.**

(a) No person shall block or interfere with, or attempt to block or interfere with, any other person along a public sidewalk by any means, including, but not limited to, standing on that part of the sidewalk used for pedestrian travel or placing any object or vehicle in such area, with the intent to interfere with free passage.

(b) No person shall block or interfere with, or attempt to block or interfere with, pedestrian or vehicular entrances to public or private property abutting a public sidewalk with the intent to interfere with the free ingress to or egress from such property.

(c) This section shall not apply to any activity otherwise made lawful, including, but not limited to, lawful protesting activity and lawful picketing activity. (Prior Code, § 95.700; Ord. No. 19-2000)

### **City of Sandy Municipal Code**

#### **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.)

### **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.
- (c) For purposes of this section, “crosswalk” has the same meaning as found in Oregon Revised Statutes.
- (d) A violation of any provision of this section is a Class D violation notwithstanding any other provision in this chapter. (Ord. 07-02)

### **Troutdale Municipal Code**

#### **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-O § 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-O § 2 (7.10.170), 1981).

### **West Linn City Code**

#### **6.165 Use of Sidewalks.**

A pedestrian shall not use a roadway for travel when sidewalk is available.

#### **6.170 Right Angles.**

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

#### **6.175 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.

### **City of Woodburn Ordinance**

#### **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.

#### **Section 34. Skates, Skateboards, and Roller blades.**

No person shall use skates, skateboards, roller blades or other similar devices upon a sidewalk within the downtown core area bounded on the north by Harrison Street, on the west by Second Street, on the south by Cleveland Street, and on the east by Front Street.

## **Yamhill 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; Ord. 437 §1, 1998)

## **X. PEDESTRIANS AND INSURANCE**

### **10.1 Personal Injury Protection**

No-fault personal injury protection (PIP) benefits are covered in detail in Chapter 18, *Personal Injury Protection Benefits: The Basics and Beyond* by Dean Heiling. The minimum PIP benefits required by ORS 742.524 include up to \$15,000.00 in reasonable and necessary medical expenses for a period of two years, and 70 percent of lost income up to \$3,000.00 per month for an aggregate of 52 weeks. These benefits apply to pedestrians.

PIP benefits are primary for the insured and members of the insured's family residing in the same household that are injured as pedestrians.<sup>51</sup> PIP benefits regarding "[p]edestrians 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."<sup>52</sup> Therefore, the injured pedestrian's own motor vehicle PIP insurance, if any, will provide the first layer of PIP coverage. All other collateral benefits, including health insurance and any applicable government benefits such as Medicare, must be exhausted next. Excess PIP, which are those benefits available under the automobile insurance policy that covers the vehicle that injured the pedestrian, provide the last layer of coverage. PIP benefits "stack," which means that the injured pedestrian can receive the benefits from both primary and excess PIP.

Even when primary PIP coverage is available through the pedestrian's own motor vehicle insurance, the potential for recovering excess PIP under the motorist's insurance should not be overlooked. Consider the situation where both the injured pedestrian and the motorist have PIP coverage under their respective motor vehicle insurance policies. The pedestrian exhausts his or

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<sup>51</sup> ORS 742.526(1)(c).

<sup>52</sup> ORS 742.526(1)(e).

her PIP benefits, receives the limits of the motorist's liability insurance policy, and no other insurance or collateral benefits are available. If the pedestrian has to reimburse a health insurer out of the liability insurance settlement, then that portion of the pedestrian's loss arguably is uninsured and, therefore, excess PIP benefits should be available. The author is not aware of any court decisions on this issue at the time of publication, although there may be a test case or two in the future.

Excess PIP also should be considered when primary PIP is exhausted and health insurance does not cover certain services, such as chiropractic care, or leaves patient balances due to co-pays and/or deductibles. In those instances, the remaining balances should be sent to excess PIP for payment. While resistance sometimes occurs, the author's experience has been that excess PIP eventually will pay benefits in these circumstances.

## **10.2 Uninsured and Underinsured Motorist Coverage**

Uninsured (UM) and underinsured (UIM) benefits are covered in detail in Chapter 20, *Uninsured/Underinsured Motorist Claims: Practices and Procedures* by Ben Cox and Hala Gores. When a pedestrian is injured by a driver and the driver is at fault, the pedestrian may make a claim against the driver who is covered by the driver's automobile liability insurance policy. What if the driver has no insurance or not enough insurance to fully compensate the pedestrian for his or her injuries? When that happens, the pedestrian can make a claim against his or her own automobile policy for UM or UIM benefits. The pedestrian may recover from their own insurance company "all sums which the insured \* \* \* 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 \* \* \*."<sup>53</sup> In essence, the pedestrian's own insurance company steps into the shoes of the at-fault driver. Unlike PIP, UM/UIM coverage is fault based, so the pedestrian must prove that the driver is legally responsible for the pedestrian's injuries.

# **XI. ROADWAY AUTHORITY LIABILITY**

## **11.1 General Principles**

Consider roadway authority liability as a possibility in every serious pedestrian injury or death case. Current trends in pedestrian advocacy emphasize that the public right of way exists

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<sup>53</sup> ORS 742.500.



for the safety and convenience of all users, not just people driving motor vehicles. Transportation is a multi-modal system, where walking and bicycling are essential elements. Streets should be designed and maintained to accommodate people of all ages and abilities whether traveling on foot, by bicycle, public transit, or private vehicles. These ideas and the idea that all serious crashes are preventable are the underpinnings of “Vision Zero,” a movement that you can read about online. Although not framed in particularly binding terms, Portland has adopted Vision Zero by Ordinance (Resolution 37130 dated June 17, 2015), as other cities in Oregon likely have as well. The Oregon Department of Transportation adopted a goal of zero fatalities and serious injuries in its 2016 State Highway Safety Plan, aka Transportation Safety Action Plan.

Courts are catching up too. The Oregon Supreme Court has held that ODOT’s enabling statutes “impose upon the state the duty to make highway travel reasonably safe to the general public.”<sup>54</sup> This holding should apply likewise to local jurisdictions, to all rights of way (“highways” generally are defined in the ORS as encompassing all streets), and all users including pedestrians. In a landmark case that reflects a shift away from governmental immunity toward stronger accountability for roadway authorities, the highest court of New York held that New York City could be held liable for damages caused by a speeding driver, where the city knew that speeding was commonplace and posed a risk to roadway users.<sup>55</sup>

Roadway authorities are responsible for designing and operating transportation networks where human errors are common and foreseeable, and sometimes egregious. In *Turturro*, there was evidence the driver was traveling “at least” 54 mph in a 30-mph zone. Similarly, *Unger v. Cauchon*, the driver of the vehicle drove for over 30 minutes at an excessive speed, ran red lights, and swerved around other vehicles while fleeing from his girlfriend’s brother when he lost control and crashed.<sup>56</sup> The Washington State Court of Appeals held that the defendant Island County owed a duty of care notwithstanding the driver’s conduct and, as a result, the case should not have been dismissed by the trial court. In these cases, and arguably in Oregon too, the roadway authority’s liability ordinarily is a jury question. It is currently unclear how far Oregon courts will go to hold roadway authorities responsible for designing and operating transportation networks that are dangerous due to common and foreseeable human errors.

## 11.2 Specific Issues

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<sup>54</sup> *Little v. Wimmer*, 303 Or 580, 739 P.2d 564 (1987).

<sup>55</sup> *Turturro v. City of New York*, 28 N.Y.3d 469, 68 N.E.3d 693 (2016).

<sup>56</sup> *Unger v. Cauchon*, 118 Wash.App. 165, 73 P.3d 1005 (2003).

Potential roadway issues run the gamut. Traffic control devices installed on highways within the State of Oregon are required to conform to the Manual on Uniform Traffic Control Devices (MUTCD), published by the Federal Highway Administration (FHWA). All state highways and public roadways under the jurisdiction of cities and counties within the State of Oregon are required to conform to MUTCD.<sup>57</sup> The MUTCD is also adopted by local jurisdictions, such as the City of Portland. To promote uniformity and understandability of traffic control devices, private property owners are encouraged to conform to the MUTCD when installing devices on private property.

For a case alleging traffic control devices did not comply with the MUTCD, see *Gorman v. TriMet and City of Portland*.<sup>58</sup> *Leonard v. Moran Foods, Inc.*, includes allegations pertaining to worn away crosswalk marks in violation of the MUTCD, and inadequate lighting.<sup>59</sup>

The American Association of State Highway and Transportation Officials (AASHTO) publishes the “Policy on Geometric Design of Highways and Streets” manual—commonly referred to as the “Green Book”—which is considered by many to be the pre-eminent industry guide to current highway and street design research and practices. The AASHTO Green Book provides guidance to engineers and designers on a multitude of topics including sight distance, horizontal alignment (curve radii, etc.), and vertical alignment (grades, crests, etc.).<sup>60</sup>

### **11.3 Speeding Setting Laws**

In reviewing a crash in which a pedestrian is injured (and likely many others regardless of the mode of transportation), it is appropriate to check that the roadway authority has the speed limit posted correctly. Pedestrian rights advocates have pushed with some success on both state and local levels to change speed setting laws or establish ordinances to lower designated speed limits in certain areas. If the applicable roadway authority failed to post in the area of the crash the correct, lower designated speed established by the speed setting law or ordinance, then it may be possible in the right case to establish that the roadway authority’s failure to do so contributed to a crash injuring a pedestrian.

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<sup>57</sup> See ORS 810.200 and OAR 734-020-0005.

<sup>58</sup> See *Gorman v. TriMet and City of Portland*, Multnomah County Circuit Court No. 17CV41797, January 4, 2019 Order on Plaintiff’s Partial Motion for Summary Judgment and Defendants Trimet and City of Portland’s Motions for Summary Judgment, at letter opinion p. 3, Bloch, J.

<sup>59</sup> *Leonard*, 53 Or App at 132.

<sup>60</sup> For a case alleging that roadway geometries did not comply with the AASHTO Green Book, see, *Estate of Coe v. City of Portland*, Multnomah County Circuit Court no. 20CV08246.

Determining the correct speed is a somewhat complicated analysis. Be sure to use the most recent laws and ordinances. Portland City Council Ordinance 188774, the so-called “20 mph ordinance,” reduces speeds on many Portland streets. As of this writing some of those speed reductions have not been implemented as directed, particularly on “collectors” in “residence districts.”

The Oregon legislature has amended speeds and speed setting processes several times recently. Pursuant to ORS 810.180(11), the City of Portland may establish by ordinance a designated speed that is five miles per hour lower than the speed set by statute in non-arterial streets in residence districts. Under SB 558, effective January 1, 2020, ORS 810.180(11) was expanded such that other Oregon cities (not just Portland) may pass ordinances reducing speeds on non-arterial streets in residence districts.

HB 4103, which was pending but did not pass in the 2020 session of the legislature, would have gone even further. That legislation, which likely will be reintroduced, would modify ORS 810.180(5)(g) to authorize Lane County, Multnomah County, and Portland to modify speeds if specified procedures are followed. Under the bill, the authorization to do so is not limited to non-arterial streets in residence districts. The careful practitioner will review whether a City has passed a speed setting ordinance or, if legislation similar to HB 4103 passes in the future, whether Lane County, Multnomah County, and Portland have acted properly to change a speed.

For an in-depth discussion of speed-setting laws and ordinances, see attorney Scott F. Kocher’s January 6, 2020 article on [bikeportland.org](http://bikeportland.org) titled, “NW Portland is now a Slow Zone. Here’s how your neighborhood can be one too.”<sup>61</sup>

#### **11.4 Sovereign Immunity and the Oregon Tort Claims Act**

Practitioners must keep in mind that claims against roadway authorities are subject to discretionary immunity under ORS 30.265(6). Claims also are subject to Oregon Tort Claims Act (OTCA) notice requirements under ORS 30.275. Discretionary immunity and OTCA notice requirements are beyond the scope of this publication.

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<sup>61</sup> Kocher, Scott, *NW Portland is now a Slow Zone. Here’s how your neighborhood can be one too*, BIKEPORTLAND.ORG, January 6, 2020. Can be accessed at: <https://bikeportland.org/2020/01/06/nw-portland-is-now-a-slow-zone-heres-how-your-neighborhood-can-be-one-too-309150>.

## **XII. PEDESTRIAN ADVOCACY AND JURIES<sup>62</sup>**

Pedestrian cases present unique challenges. You may want to think about the following ideas, themes, and language for your demand letter, briefing, and presentation in front of a jury:

### **12.1 Language Matters**

Pay attention to the words you and the defense lawyer use:

(a) The terms “pedestrian” and “bicyclist” are used throughout the law and, therefore, for purposes of expediency, in this chapter. “Person first” language is rapidly expanding from other contexts, such as disability, to all areas of advocacy. In your writing and jury advocacy, consider whether it is more appropriate to describe a “person walking” or a “person using a mobility device,” rather than “pedestrian.”

(b) Even the term “Jaywalking” has baggage. The term was created in the early 20th century as cars came to dominate streets. Before cars, streets were where children played, neighbors met, and merchants did trade. Horse carts traveled at 6 mph. People on foot crossed whenever and wherever they pleased. As cars came to dominate our streets, things changed. Crosswalks and pedestrian push-buttons scaled back the right of people on foot to cross only at specified locations and times. As drivers started killing and maiming people on foot, especially children in large numbers, car manufacturers scrambled to deal with backlash. Car manufacturers used PR campaigns and turned “jay,” which was an insulting term meaning “country bumpkin,” into “jaywalking,” to blame and shame the victims of their products. Whether and how to present this historical context and the dominance of car culture to a jury is highly sensitive. In the right case, however, it might provide context for the argument that the legal rights for people on foot must not be eroded further just on account of the continuing dominance of “car culture.” And, it’s not us versus them. Everyone is a pedestrian.

(c) “Person driving” not “car.” When you say your client “was hit by a car,” you’re using the passive voice, taking focus off the action word and the actor, and completely removing the person who was driving (probably the defendant) from what you’ve said. Be aware of that.

(d) “Crash” not “accident.” “Accident” normalizes tragedy and implies nobody is a fault. Crashes result from roadway and vehicle design, and roadway user decisions. There is a reason law enforcement reports, and a rapidly growing number of state agencies, refer to “crashes” not

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<sup>62</sup> Section co-authored with attorney Scott F. Kocher.

“accidents.” For a compelling argument against “accident” see the following NY Times article, *It’s No Accident: Advocates Want to Speak of Car ‘Crashes’ Instead*.<sup>63</sup>

## 12.2 Themes

In many pedestrian cases the defense will propose that the pedestrian had ample opportunity to avoid the crash. For example, car headlights at night are visible a long way off. A person using a crosswalk therefore might have the right of way, but would be a fool to assert it. To frame the issues and pick your jurors you might think about the following issues and themes:

(a) The basic speed rule and “driving to conditions.” As a driver, when it is dark and wet how much slower do you need to go? If you can’t see, what does a driver need to do?

(b) Does a person walking have more responsibility because they can see cars better? When a person drives do they have more responsibility because their vehicle has more ability to cause harm? You might find agreement that a driver of a semi-tractor truck should be held to a higher level of responsibility to be careful than an elderly pedestrian.

(c) The driver has signed a driver’s license, and is the captain of a vehicle weighing thousands of pounds.

(d) In many pedestrian cases, the myth of the distracted pedestrian is present regardless of whether it is overtly addressed. Studies show people, including many transportation professionals, over-estimate the effects of distracted walking, a bias that increases among people that primarily get around by car and spend little time in pedestrian areas. In jury selection you might get people to agree that distraction, and human error generally, are equally prevalent among people, regardless of what mode of transportation they’re using at the time.

(e) Another idea that surfaces frequently is that pedestrians should wear high visibility clothing, and the implication that everyone who doesn’t is negligent. It may help to talk with potential jurors about the following: How did people get to the courthouse that day? Even people who drove probably crossed the street downtown. Everyone is a pedestrian. What color is the clothing (and skin) of the people in the courtroom? Walking is a normal, everyday activity, not a football game or other sporting contest (beware “car vs. ped” language that implies your client

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<sup>63</sup> Richtel, Matt, *It’s No Accident: Advocates Want to Speak of Car ‘Crashes’ Instead*, NEW YORK TIMES, May 22, 2016 (can be found at <https://www.nytimes.com/2016/05/23/science/its-no-accident-advocates-want-to-speak-of-car-crashes-instead.html> or by searching for “nytimes crash not accident.”).

walking to the grocery store had somehow signed up for a boxing match). People walking can be anybody. They can range from young and fit to old and infirm; from a person who has time and money to buy high visibility clothing to people who are mentally ill or suffering addiction. If people go out and are drinking socially, it is likely a responsible choice for them to walk home, rather than drive. For this reason, walking while drunk may be socially preferable, and in any event is not illegal.

(f) “Usual” thinking often ignores pedestrians. As kids we learned red means stop, and green means go. Right? Wrong. Green means look and yield to pedestrians in the crosswalk and when it is clear proceed with caution.

(g) While it may not come up a trial, bear in mind that every fatality and serious injury in a public right of way is preventable, typically through engineering, enforcement, or education. Examining incidents with “root cause analysis” and applying solutions can result in extraordinary reductions in collision rates, approaching the Vision Zero goal of complete safety. For example, Portland has the same population as Oslo, Norway. Forty-nine people died in crashes on Portland streets in 2019. In the same year, Oslo had just *one* traffic fatality. Beyond that remarkable contrast, people often shift from initially rejecting as unrealistic the idea of zero fatalities, but embrace it wholeheartedly when asked: “What is a good goal for our community to reduce road fatalities? ... What is a good goal for your family?”

(h) Your themes lay the groundwork to polarize the case. In many pedestrian cases, the real issue can and should come down to whether a person has the right to the road or not. Find out in jury selection whether, in a court of law, the prospective juror would follow the judge’s instruction about who has the right to the road. In a given case with a pedestrian in a crosswalk, there may be only one exception to the pedestrian having the right of way, which is if the pedestrian “suddenly leave[s] a curb or other place of safety and move[s] into the path of a vehicle that is so close as to constitute an immediate hazard” under ORS 814.040(1)(a). Hitting a pedestrian wearing dark clothing in a crosswalk is no different than a driver who, even unintentionally, doesn’t see a stop sign and blows through an intersection. The pedestrian may have been “hard” to see, and the driver didn’t mean to cause the harm, but their side still has the legal responsibility for the crash.

### **XIII. PEDESTRIAN ADVOCACY ORGANIZATIONS**

For further information, contact:

**Oregon Department of Transportation's Bicycle and Pedestrian Program**

555 13 Street NE, Suite 2

Salem, OR 97301-4178

Jessica Horning, Program Manager

[Jessica.horning@state.or.us](mailto:Jessica.horning@state.or.us)

<http://www.oregon.gov/odot/hwy/bikeped/pages/index.aspx>

503-986-3555 (Phone)

503-986-3290 (Fax)

**City of Portland Bureau of Transportation's Pedestrian Advisory Committee**

1120 SW Fifth Ave., Suite 800

Portland, OR 97204

Michelle Marx, Pedestrian Coordinator, 503-823-4589

[michelle.marx@portlandoregon.gov](mailto:michelle.marx@portlandoregon.gov)

503-823-5185 (Phone)

503-823-7576 (Fax)

**Oregon Walks** (statewide pedestrian advocacy organization)

P.O. Box 2252

Portland, OR 97208

<http://oregonwalks.org/>

[info@oregonwalks.org](mailto:info@oregonwalks.org)

Jess Thompson, Executive Director

503-891-7400

**America Walks** (national pedestrian advocacy organization)

PO Box 10581

Portland, OR 97296

<http://americawalks.org/>

503-757-8342

**The Street Trust** (Portland-based organization promoting walking, biking and public transit in Oregon)

618 NW Glisan Street, Suite 203

Portland, OR 97209

<https://www.thestreettrust.org/>

(503) 226-0676

[info@thestreettrust.org](mailto:info@thestreettrust.org)

**Oregon and SW Washington Families for Safe Streets**

[orsafestreets@gmail.com](mailto:orsafestreets@gmail.com)

(503) 290-4569

<https://www.facebook.com/ORSafeStreets/>

