

NATIONAL POLICY & LEGAL ANALYSIS NETWORK
TO PREVENT CHILDHOOD OBESITY



Creating Pedestrian Friendly Streets: Avoiding the Legal Hurdles



Sara Zimmerman, JD

Legal Hurdles to Good Street Design

- Is it allowed?
- Will we be sued?



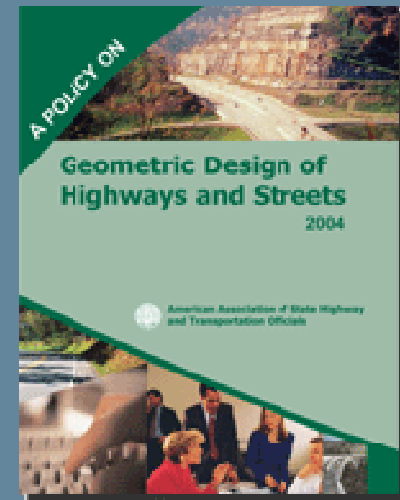
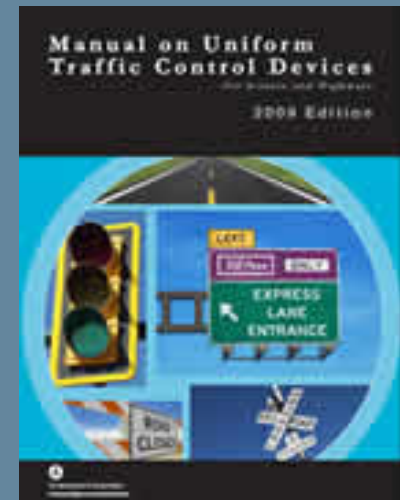
Is it allowed?

- Local policies and practices
- State laws
- National design guidelines and manuals



National Manuals and Guidelines

- Some of the manuals are binding, some are advisory
- Some provisions within them are binding and others are not
- Good news: increasing bike/ped friendly

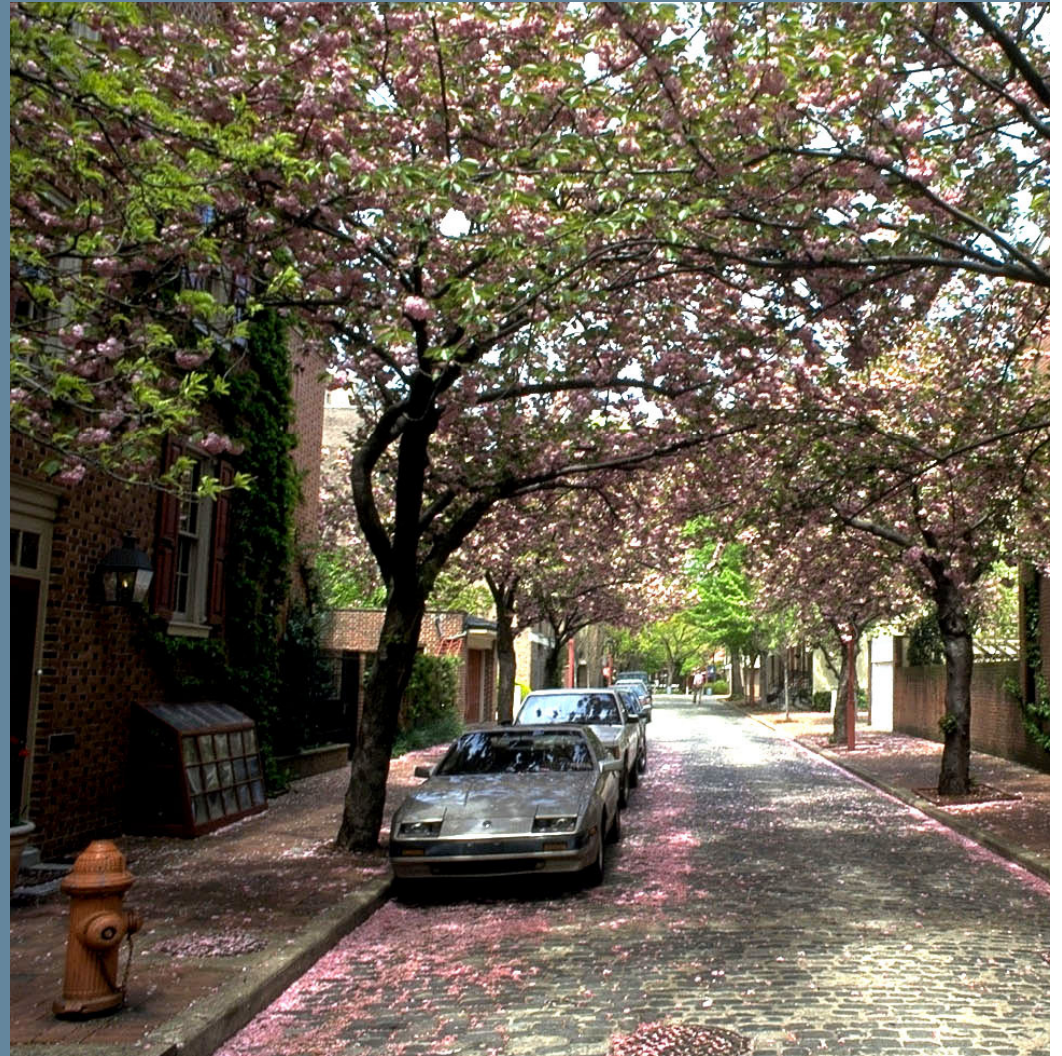




Narrow streets

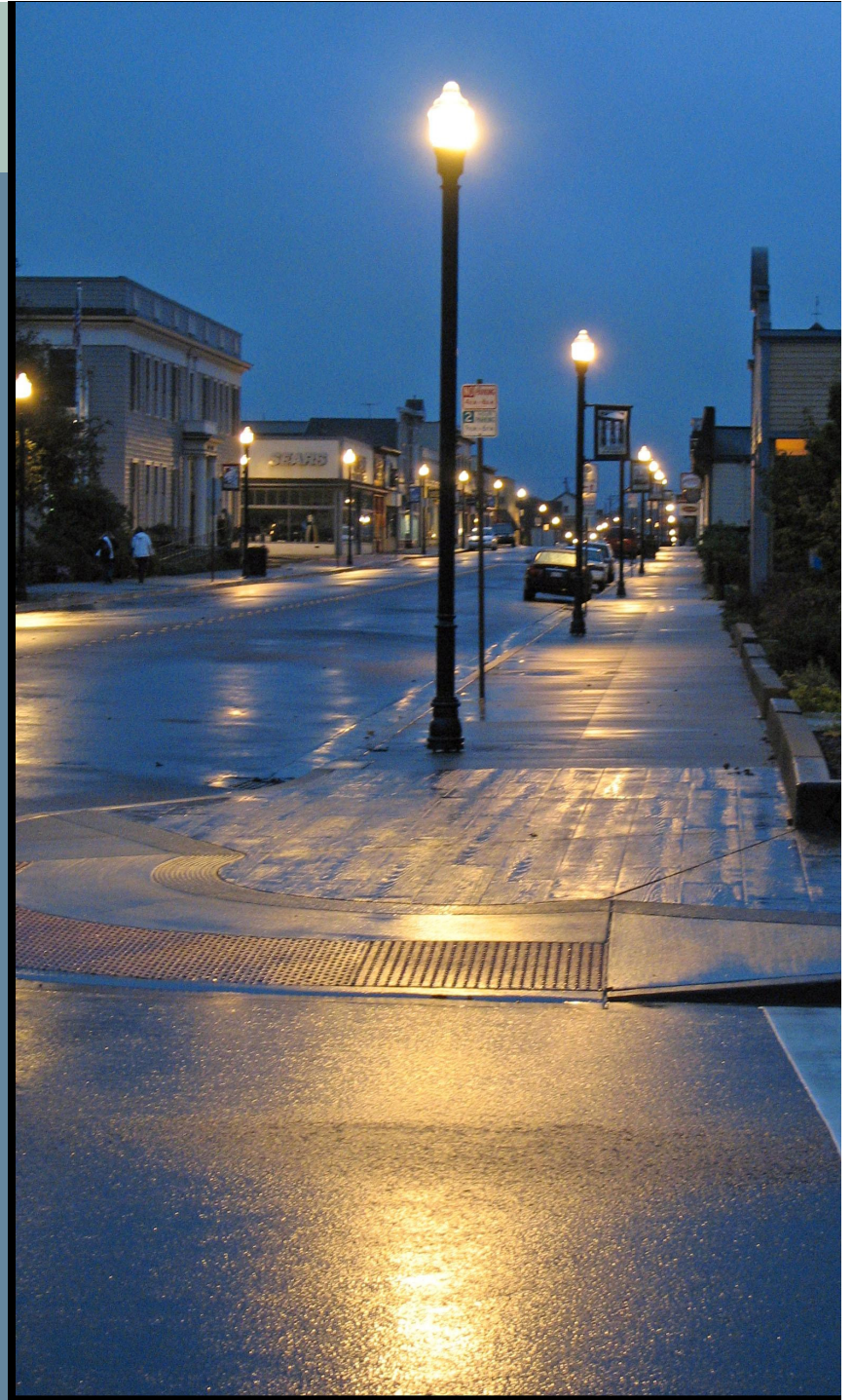
2004 Green Book:
allows lane widths
from 10-12 ft – 12 ft
“most desirable”

2011 Green Book:
Encourages 10 ft
widths



Upshot:

- Understand and **comply with legal requirements**
- Many aspects of manuals **aren't legally required**
- A lot of **great pedestrian friendly design is fully authorized**
- **Advocate** for ongoing improvements



Will we be sued?

If someone gets hurt, will we be found liable for negligence?



Myth Versus Reality

Myth: Sticking to the tried and true ways will protect you from liability.



Myth Versus Reality

Myth: Sticking to the tried and true ways will protect you from liability.

Reality: Failure to adopt new & safer practices can increase the likelihood of liability.



What is negligence?



Negligence occurs when:

- *a person or entity does not behave with reasonable care in the situation in question*
- *That carelessness causes an injury*

2 reasons why liability fears shouldn't be a barrier:

- Acting with **reasonable care** avoids negligence
- **Governmental immunity** protects against liability for negligent street design



Acting with Reasonable Care



Reasonable care = being responsible

- Consider possible dangers and hazards
- Take reasonable steps to protect against those hazards
- Have evidence or logic supporting decisions



Reasonable Care

Does deviating from manuals equal negligence?

No.



www.pedbikeimages.org / dan burden

Reasonable Care

Common misconception: failure to follow manuals means liability

- Manuals provide strong evidence that something is standard practice
- But other evidence that a decision reduces dangers also demonstrates reasonable care



Reasonable Care

You can show reasonable care without relying on a manual.

- Improved safety for pedestrians, bicycles, and vehicles



Reasonable Care

Immunity for Design Decisions



Defenses: Governmental Immunity

- No liability even though each element of negligence present
- How it works varies by state



Street design decisions are largely immune from liability.



- The general rule: municipalities are not liable for injuries resulting from improper design.

Defenses: Immunity



Why?

- Governmental immunity protects **discretionary (policy)** decisions
- Street design is regarded as a policy decision



Defenses: Immunity



Immunity includes pedestrian friendly street design features.

Courts have provided immunity for:

- street width
- number of lanes
- street trees
- design speed & curb radii
- on street parking

Defenses: Immunity



Not immune for operational issues or decisions

No immunity:

- Once there is notice of a danger, failure to fix it or warn about it
- Failure to build something according to design

Defenses: Immunity



If dangers are identified:

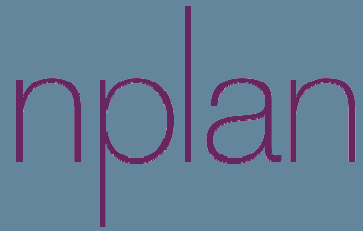
- Fix the problem if feasible
- Put up warning signs



In Conclusion



Liability should not be a barrier to pedestrian friendly streets



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