



DEPARTMENT OF THE CORPORATION COUNSEL

COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
TELEPHONE: (808) 270-7740
FAX: (808) 270-7152

December 8, 2003

MEMO TO: Michael J. Molina, Chair
Public Works and Traffic Committee

F R O M: Cindy Y. Young, Deputy Corporation Counsel *CY*

SUBJECT: **Parking Along Unimproved Shoulders of Roadways**

INTRODUCTION

This responds to your memorandum dated July 9, 2003 requesting an opinion regarding whether Chapter 10.04 and Chapter 10.48, Maui County Code, prohibit vehicles from parking along unimproved shoulders of public highways.

RELEVANT ORDINANCES

Maui County Code ("MCC") section 10.48.030 provides in relevant part:

A. No person shall stop, stand or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with the law or the direction of a police officer or traffic control device, in any of the following places:

- 1. On a sidewalk;
* * *
- 13. Any place where official signs prohibit stopping;
* * *

MCC section 10.04.430 states:

"Sidewalk" means that portion of a street between the curblines, or the lateral lines of a roadway, and the adjacent property lines intended for the use of pedestrians. (Emphasis added.)

ANALYSIS

MCC section 10.48.030(A) lists eighteen categories of places where the parking of a vehicle is illegal, but does not explicitly address unimproved shoulders of highways. Among those places that are explicitly referenced by MCC section 10.48.030(A) are sidewalks.

MCC section 10.04.430 defines a sidewalk as "that portion of a street between the curblines, or the lateral lines of a roadway, and the adjacent property lines intended for the use of pedestrians."¹ This definition does not distinguish between paved and unpaved portions of a street; therefore, it is possible that a particular highway shoulder, though unpaved, may be characterized as a sidewalk under MCC section 10.04.430, provided that the area is "intended for the use of pedestrians." MCC section 10.04.430 does not elaborate as to what areas are "intended for the use of pedestrians." In the absence of a clear legal definition, the determination of whether a particular highway shoulder constitutes a "sidewalk" will depend upon the facts and circumstances relating to the area in question, particularly to the extent such facts and circumstances support or do not support an inference that the shoulder in question is intended for use by pedestrians.

MCC section 10.48.030(A)(13) provides one means by which issues relating to parking on unimproved shoulders may be clarified. MCC section 10.48.030(A)(13) provides for the erection of official signs prohibiting parking. Such signs provide motorists with notice of a parking prohibition.²

Clarification of the issue of parking along highway shoulders could also be obtained by amending MCC Chapter 10.48 and addressing the matter explicitly. Such an amendment could, for example, impose a ban on such parking generally or under certain conditions or impose restrictions applicable to particular highways and times of day.

¹Pursuant to MCC section 10.04.030, the definitions set forth in MCC chapter 10.04 apply to all of MCC Title 10, including, therefore, MCC section 10.48.030.

²It is our understanding that Maui police officers issue parking tickets to cars parked along unimproved shoulders of highways and that Maui district courts have upheld these tickets despite the absence of signs prohibiting parking.

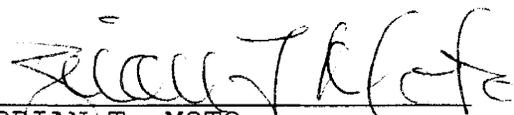
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In general, there are safety and liability implications associated with allowing parking on unimproved shoulders. The exact type and nature of any risks associated with such parking will depend on the highway in question and the facts relevant thereto. Although it is not possible to address in this memorandum all safety and liability considerations with regard to all possible locations, a number of issues may be common whenever parking on unimproved shoulders is considered. Such issues include, for example, whether parking will: affect vehicular flow and movement on the highway; impede pedestrian and bicycle access and movement; interfere with sight distances from adjacent driveways; erode surfaces or damage landscaping or other features; restrict passage of commercial or emergency vehicles; or expose vehicle occupants and pedestrians to hazards that may be associated with the entering or exiting of vehicles while parked along the shoulder.

Should you have any further questions, please do not hesitate to contact this office.

CYY:ko
cc: Tom Phillips, Chief of Police
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APPROVED FOR TRANSMITTAL:


BRIAN T. MOTO
Corporation Counsel
County of Maui