

CITY OF OAKLAND
COUNCIL AGENDA REPORT

TO: Public Safety Committee
ATTN: Chairperson: Larry Reid
FROM: John Russo, City Attorney
DATE: February 26, 2002
RE: Grizzly Peak Parking

INTRODUCTION

This opinion was prepared in response to a request by the Public Safety Committee at its January 8, 2002 meeting. This opinion is based on information provided by City staff and other outside entities, to date. If additional or new information is provided, the conclusions reached below are subject to revision as it may be necessary to further explore the issues.

ISSUE

Under what legal authority and what processes can the City impose “no parking” restrictions on Grizzly Peak Road from the Contra Costa County border to the full extent of University of California, Berkeley, and East Bay Regional Park District boundaries.

BRIEF ANSWER

Cities may not regulate traffic and parking within their jurisdictions except to the extent that the state legislature has delegated such authority, because the field of traffic and parking regulations is preempted. The state vehicle code, however, grants cities broad discretion to institute parking regulations on streets and roads within their jurisdictions by resolution or ordinance. Pursuant to state law, the Oakland City Council has adopted a comprehensive set of traffic and parking regulations, which are set forth in Chapter 10 of the Oakland Municipal Code. The City Council has delegated authority to the City’s Traffic Engineer to implement traffic and parking regulations in certain emergency situations and in circumstances where there are inherent traffic hazards without City Council approval, such as in and around bus stops. Nearly all other situations require City Council approval prior to implementation.

A number of public entities, including cities, state universities and state parks, are also authorized by the California Vehicle Code to institute “no parking” regulations on property owned and/or controlled by the entity. In this instance, there is insufficient information concerning the property interests of the several public entities involved in this matter to conclusively say whether the University or EBRPD do or do not have authority under the vehicle code to institute “no parking along Grizzly Peak Road without consent or approval action by the City Council.

In addition to the Vehicle Code, the State Fire Code provides broad discretion to local fire chiefs to restrict or prohibit traffic and/or parking within grassy, brushy or forest-covered lands when he/she determines that a fire hazard exists. Entry in violation of such orders constitutes a trespass, except in limited circumstances, and fire chiefs may impose such traffic and parking restrictions over a partial or entire area, for a temporary or permanent period, depending on the nature of the fire hazard.

BACKGROUND

The property lines for both the University and EBRPD run along Grizzly Peak Road, southwest and northeast, respectively. Alameda County Assessor maps and City records show a City of Oakland 70 foot right-of-way that encompasses Grizzly Peak Road (includes paved asphalt, shoulder and drainage ditch areas), between the parcels identified as University and EBRPD properties. The County Assessor's documents do not set forth the fee interests, if any, of the University, City or EBRPD in the City's right of way.

All three entities provide some level of road improvements and maintenance within the City's right of way (i.e., within the road, shoulder and drainage ditch). According to Mr. Klatt, the University provides routine vegetation management, erosion control and garbage and litter pick-up, and repairs to road and off-road improvements (such as guard rails and pedestrian access stairways) on the southwest part of the road. According to Mr. Kent, EBRPD provides routine road maintenance, such as litter clean-up, and road improvements, such as repair /replacement of guard rails, and is currently considering a vegetation management program along the northeast part of the road. The City has also provided road improvements, such as asphalt paving, and maintenance within the City's right-of-way. University and EBRPD police, rather than OPD, provide regular policing of vehicle and pedestrian traffic on the road, and cite for violations of the vehicle code, EBRPD ordinances and City ordinances.

In July, 2001, the University of California at Berkeley ("University") and the East Bay Regional Park District ("EBRPD") installed "No Parking" signs along portions of Grizzly Peak Road that run between the two entities, from the Contra Costa County border to the full extent of University and EBRPD boundaries. The University also sent a letter dated July 27, 2001 to employees, students and other campus community members informing them that University and EBRPD police would begin enforcing the posted no-parking restrictions on September 1, 2001.

Based on information provided by Thomas Klatt, University Police Director of Emergency Planning and Communications, the University imposed the parking restrictions consistent with the University's environmental policy which is directed at discouraging the use of single-occupancy vehicles and encouraging use of other transportation modes, including carpools and public transit. The University expanded the Silver Laboratory facility in 1995, which was anticipated to increase the number of employees, students and visitors to the area. In order to reduce the traffic and congestion impacts, including the potential routine occurrence of spillover parking Monday through Friday along Grizzly Peak Road, the University identified transportation programs and construction efforts it would undertake. Mitigation measures identified in the project environmental impact

report included vanpool and shuttle programs, flextime, institution of a permit parking system and construction of new parking facilities to be completed over several years.¹

Based on information provided by Jerry Kent, Assistant General Manager for EBRPD, the “no parking” signs were installed by EBRPD along the northeast portion of Grizzly Peak Road pursuant to state law and park district ordinances.

In addition to imposing the parking restrictions, the University coordinated a meeting between the fire chiefs of the University, Cities of Berkeley and Oakland and EBRPD to discuss vehicle-related fire dangers along this area of Grizzly Peak Road.² The fire officials collectively determined that off-road parking along this area of Grizzly Peak Road constituted a fire hazard and supported the no-parking policies implemented by the University and EBRPD. The City of Oakland Fire Chief subsequently submitted a report to the Public Safety Committee on January 8, 2001, in which he determined that a vehicle-related fire danger exists and parking along the road should be prohibited. Mr. Klatt and Mr. Kent presented information to the Committee indicating support and agreement with Fire Chief’s determination.

It should be noted that although the City’s Fire Chief has determined that parked vehicles present a fire hazard on Grizzly Peak Road, neither he nor any other City official has undertaken any action to prevent parking in the area. All of the “no parking” signs were installed by the University and EBRPD, and enforcement has been carried out by University police. EBRPD police were prepared to cite violators under park ordinances, but have not encountered any violations on the northeast side of the road.

ANALYSIS

Several specific state and local vehicle parking laws under which the City may impose parking restrictions on City streets are discussed below. The laws were selected for discussion in this opinion because they are relevant to the authority of the City of Oakland, University and EBRPD to impose parking regulations on public properties under the joint management and control of several public entities. This opinion does not, therefore, provide an exhaustive analysis of all existing state and local legislation under which parking restrictions may be imposed by each of the entities.

State Law

State law preempts the field of traffic control, including the area of parking restrictions.³ Therefore, cities are required to operate under state law with respect to local traffic and

¹ See “Silver Laboratory Expansion Project, Tiered Initial Study and proposed Negative Declaration (Environmental Impact Assessment)”, September 21, 1995, pp IV 26 through IV 31, and IV 35 through IV 36.

² Fire officials present included Chief Gerald Simon, Oakland; Chief Reginald Garcia, Berkeley; Chief Steve Woodill, California Department of Forestry and Fire Protection, and Chief Norman Lopera, East Bay Regional Park District.

³ Vehicle Code §21 states, in relevant part:

parking regulations, except for those areas that have been expressly delegated to cities to regulate. (Rumford v. City of Berkeley, (1982) 31 Cal.3d 545, 550.)

The state legislature has expressly delegated broad authority to local elected bodies to institute “no parking” regulations within their jurisdictions. Under state law, cities may “. . . prohibit or restrict the stopping, parking, or standing of vehicles . . . on certain streets or highways, or portions thereof, during all or certain hours of the day” by resolution or ordinance. (Cal. Veh. Code §22507.) The state also authorizes cities to impose numerous specific parking regulations, such as residential permit parking and metered parking, (See, e.g., Cal. Veh. Code § 22507, et seq.) The Oakland City Council, therefore, has broad authority to impose “no parking” areas as well as more limited parking regulations on Oakland streets and roads.

The City Council has enacted a host of local traffic laws pertaining to parking in Title 10 of the Oakland Municipal Code. In some instances, the Council has delegated authority to the City’s Traffic Engineer to determine when “no parking” restrictions are needed and to impose such restrictions without Council approval. These instances involve emergency situations in which temporary traffic and parking restrictions are needed, and situations in which permanent restrictions are needed to address imminent hazards, such as parking in and around bus stops or traffic signals. (See O.M.C. §10.28.090, 10.28.170.) Nearly all other types of parking regulations require City Council approval prior to implementation.

Although it could be amended by the City Council, the City’s traffic code does not currently provide for regulation of roadside parking in open grassy, brushy or forestlands such as the Grizzly Peak area. The City’s Traffic Engineer would be authorized to impose parking restrictions in these types of areas when he determines that an emergency or inherent traffic danger exists – e.g., during a heavy rainy season that could result in rapid road-side erosion, and/or road failure.

California Vehicle Code §21113

In addition to the broad authority conveyed to cities under California Vehicle Code §22507, California Vehicle Code § 21113 authorizes numerous public entities, including state universities, state parks and cities, to institute “no parking” regulations along streets and roads on the entity’s property.

Section 21113(a) states, in relevant part:

No person shall . . . stop, park or leave standing any vehicle . . . whether attended or unattended, upon the driveways, paths, parking facilities, or grounds of any ... state university, unit of the state park system, county park or any property under the direct control of the legislative body of a municipality ... except with the permission of, and upon and

Except as otherwise expressly provided, the provisions of this code are applicable and uniform throughout the state and in all counties and municipalities therein, and no local authority shall enact or enforce any ordinance on the matters covered by this code unless expressly authorized therein.

subject to any condition or regulation which may be imposed by the legislative body of the municipality, or the governing board or officer of the ... state university, ... county park, ... or the Director of Parks and Recreation regarding units of the state park system. (Emphasis added.)

The City, University or EBRPD may be authorized under this section of the vehicle code to institute “no parking” along Grizzly Peak Road. County Assessor and City property records are not conclusively indicative of the entities’ fee interests within the road or road shoulder, and can not be fully ascertained short of a full-fledged title search. City’s records, which include records from the County Assessor, show various types of conveyances occurring along Grizzly Peak Road, from and to the City, since the 1930s, but it is not clear whether the City has all original and subsequent grant and other conveyance records. The entities’ long-standing repair, maintenance and policing practices along this area of Grizzly Peak are consistent with the existence of multiple interests, however. All three entities exercise some control over the roadway and shoulder area by way of providing routine repairs and maintenance, vegetation management and policing.

Whether such parking restrictions require a public hearing prior to implementation, depends on the type of entity imposing the restrictions. Section 21113(d)⁴ requires local municipalities to conduct a public hearing to review new restrictions on vehicle use prior to enforcement, if the use was permitted as of January 1, 1976. To impose new regulations under this code section, the City Council must conduct a public meeting to determine the need for such regulations prior to implementation and enforcement.

Neither state universities nor state parks are required to conduct public meetings prior to implementation of new regulations. “Officers” as opposed to “legislative bodies” of the state universities and parks may impose parking and other traffic regulations. These entities need only prepare and keep available for inspection a written statement of regulations and to erect or install signs at appropriate locations.⁵

⁴ Section 21113(d) states, in part:

With respect to the permitted use of vehicles . . . on property under the direct control of the legislative body of a municipality, no change in the use of vehicles . . . on the property, which had been permitted on January 1, 1976, shall be effective unless and until the legislative body, at a meeting open to the general public, determines that the use of vehicles . . . on the property should be prohibited or regulated. (Emphasis added.)

⁵ Section 21113(b) states, in part:

Every . . . legislative body, or officer shall erect or place appropriate signs giving notice of any special conditions or regulations . . . imposed under this section and every . . . legislative body, or officer shall . . . prepare and keep available . . . for examination by all interested persons, a written statement of all . . . special conditions and regulations adopted under this section.

California Fire Code

The state legislature has deemed the unrestricted use of grass, grain, brush or forest covered areas a fire hazard,⁶ Consequently, the City's Fire Chief is authorized to restrict access to or to close such areas, subject to public posting, when he determines that a fire hazard exists.⁷

Entering and remaining in areas closed under this provision is deemed a trespass, although there is an exception for owners and residents of the restricted area, their guests or invitees, and federal, state and local public officers.

The City's Fire Chief has broad discretion under Sections 4 and 5 to designate entire or partial properties off-limits to the general public, for a temporary or extended period of time, depending on his assessment of the fire danger. Further, the designated area could encompass all aspects of a road or only parts of the road, for example off-road shoulders. The term "area" is broadly defined elsewhere in the code as "a particular extent of surface". (See, 1998 State Fire Code, Part II, Definitions and Abbreviations, Article 2, Section 2002 – A, page 1-9.)

⁶ See, 1998 State Fire Code, Division II, Special Hazards, Appendix II-A, Suppression and Control of Hazardous Fire Areas, p. 1-273:

Section 1 - Scope

The unrestricted use of grass-, grain-, brush- or forest-covered land in hazardous fire areas is a potential menace to life and property from fire and resulting erosion. . .

⁷ See, 1998 State Fire Code, Division II, Special Hazards, Appendix II-A, Suppression and Control of Hazardous Fire Areas, p. 1-273:

Section 4 - Restricted Entry

The chief shall determine and publicly announce when hazardous fire areas shall be closed to entry and when such areas shall again be opened to entry. Entry on and occupation of hazardous fire areas, except public roadways, inhabited areas or established trails and camp sites which have not been closed during such time when the hazardous fire area is closed to entry, is prohibited.

Section 5 - Trespassing on Posted Property.

5.1 General. When the Chief determines that a specific area within a hazardous fire area presents an exceptional and continuing fire danger because of density of natural growth, difficulty of terrain, proximity to structures or accessibility to the public, such areas shall be closed until changed conditions warrant termination of closure. . .

CONCLUSION

The City may implement parking restrictions under several different state and local laws, for traffic fire safety purposes. The City's Traffic Engineer may impose parking restrictions without City Council approval when he determines that a traffic hazard exists. The Fire Chief may impose parking restrictions, also without City Council approval, when he determines that a fire hazard exists. In most other situations, City Council approval is required prior to implementation and enforcement.

With respect to specific authority to regulate parking along Grizzly Peak Road from the Contra Costa County border along the full extent of University and/or EBRPD property, the University, EBRPD and the City appear to be permitted under state law to institute parking regulations. City's documents indicate that various conveyances and disposition of property rights have been made at least since the 1930s, and that all three entities may have property rights in this part of Grizzly Peak Road. There is, in fact, a long-standing practice of shared repair, maintenance and policing of the road, and the University and EBRPD installed the "no parking" signs pursuant to their own governing laws and regulations. In any event, the City has no legal obligation to remove the signs or prohibit enforcement at this time.

Respectfully submitted,

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