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Legal Opinion 2013-013

TO: Mayor John Engen, City Council, Bruce Bender, Kevin Slovarp, Dan Jordan, Jessica Miller, Doug Harby, Ben Weiss, Donna Gaukler, Kathy Mehring, Jackie Corday, Morgan Valliant, Eric Seagrave, Betsy Willett, Mark Muir, Mike Brady, Chris Odlin, Mike Colyer, Scott Hoffman

CC: Legal Department Staff

FROM: Jim Nugent, City Attorney

DATE May 31, 2013

RE: Pursuant to Montana state traffic regulation laws bicycles are vehicles that when parked within public rights-of-way including at bicycle racks located within public sidewalks, as well as on public property are subject to the 120 hour/five (5) day parking regulation set forth in Section 61-8-356 Montana Code Annotated.

FACTS:

Reportedly there are concerns about bicycles being abandoned and/or left for extensive time periods of many days at bicycle racks located within the public sidewalk areas within the public dedicated rights of way of a street or alley as well as upon public property such as public parks and public trails.

ISSUE(S):

Does the 120 hour/five (5) day vehicle parking regulation pertaining to public streets and public property set forth in Montana state law apply to bicycles parked at bicycle racks located within a public right-of-way, such as within a public sidewalk at a bicycle rack, as well as to public property?

CONCLUSION(S):

Yes. Public highways and streets are generally defined as the entire width of the dedicated public right-of-way. Pursuant to Montana state law, the definition of vehicle includes a bicycle. Therefore, the provisions of Montana state law in section 61-8-356 MCA that establish a 120 hour or five (5) day parking limitation for parking on public streets includes the parking of bicycles within the public street rights-of-way, such as at a bicycle rack located within a public street right-of-way. The five (5) day parking time period regulation in section 61-8-356 MCA

also applies to public property, including; but not limited to parks, public open space and public trails.

LEGAL DISCUSSION:

Montana's highway code pursuant to subsections 60-1-103(18) and (19) MCA defines the terms "highway" and "highway, road and street" as follows:

"(18) 'Highway' INCLUDES RIGHTS-OF-WAY or other interests in land, embankments, retaining walls, culverts, sluices, drainage structures, bridges, railroad-highway crossings, tunnels, signs, guardrails, and protective structures." (emphasis added)

(19) 'Highway', 'road', and 'street' whether the terms appear together or separately or are preceded by the adjective 'public', are general terms DENOTING A PUBLIC WAY for purposes of vehicular travel AND INCLUDE THE ENTIRE WIDTH OF THE RIGHT-OF-WAY." (emphasis added)

Subsections 61-1-101(27) and (77) MCA of Montana's traffic regulations defines the terms "highway" and "street" as follows:

"(27) 'Highway' or 'public highway' means THE ENTIRE WIDTH BETWEEN THE BOUNDARY LINES OF EVERY PUBLICLY MAINTAINED WAY WHEN ANY PART OF THE PUBLICLY MAINTAINED WAY IS OPEN TO THE USE OF THE PUBLIC FOR PURPOSES OF VEHICULAR TRAVEL." (emphasis added)

"(77) 'Street' means THE ENTIRE WIDTH BETWEEN THE BOUNDARY LINES OF EVERY PUBLICLY MAINTAINED WAY WHEN ANY PART OF THE PUBLICLY MAINTAINED WAY IS OPEN TO THE USE OF THE PUBLIC FOR PURPOSES OF VEHICULAR TRAVEL." (emphasis added)

Similarly, Missoula Municipal Code traffic regulations pursuant to section 10.02.340 MMC define "Street or highway" as meaning"

"10.02.340 Street or highway. 'Street' or 'highway' means THE ENTIRE WIDTH BETWEEN THE BOUNDARY LINES OF EVERY WAY PUBLICLY MAINTAINED WHEN ANY PART THEREOF IS OPEN TO THE USE OF THE PUBLIC FOR PURPOSES OF VEHICULAR TRAVEL." (emphasis added)

It should also be noted and emphasized that pursuant to subsection 61-12-101(14) MCA local government authorities are authorized or empowered to enact ordinances and any provisions of chapters 61-8 and 9 MCA, such as (61-8-356 MCA the 120 hour or five day vehicle parking regulation) pertaining to sidewalks streets and highways "regulating traffic, pedestrians, vehicles and operators of vehicles THAT ARE NOT IN CONFLICT WITH STATE LAW OR FEDERAL REGULATIONS and enforcing the ordinances". (emphasis added)

The definition of “vehicle” in Montana state traffic regulation law traffic regulations includes bicycles. Montana state law defines “vehicle” as meaning:

“(a) ‘Vehicle’ means a device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by animal power or used exclusively upon stationary rails or tracks. (b) The term does not include a manually or mechanically propelled wheelchair or other low powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.”

See subsection 61-1-101(90) MCA.

The Montana Criminal Code definition of the term “vehicle” set forth in subsection 45-2-101(78) MCA also is broad enough to include bicycles, defining the term “vehicle” as meaning;

“(78) ‘Vehicle’ means a device for transportation by land, water, or air or by mobile equipment with provision for transport of an operator.”

Pursuant to Montana’s traffic regulations section 61-8-356 MCA establishes a 5 day or 120 hour parking time period regulation for vehicles on streets. Section 61-8-356 MCA provides as follows:

“61-8-356. PROHIBITION AGAINST PARKING OR LEAVING VEHICLES ON PUBLIC PROPERTY-PRESUMPTION OF OWNERSHIP. (1) A VEHICLE MAY NOT BE PARKED OR LEFT STANDING UPON THE RIGHT OF WAY OF A PUBLIC HIGHWAY FOR A PERIOD LONGER THAN 48 hours OR UPON A CITY STREET OR STATE, COUNTY, OR CITY PROPERTY FOR A PERIOD LONGER THAN 5 DAYS. (2) The abandonment of a vehicle other than a bicycle, on a public highway, a city street, public property, or private property creates a *prima facie* presumption that the last-registered owner of the vehicle is responsible for the abandonment and is liable for the costs incurred in removing, storing, and disposing of the abandoned vehicle, less the amount realized if the vehicle is sold.”

It is important to note that the five (5) day time period regulation established in section 61-8-356 MCA applies to both public streets as well as public property.

CONCLUSION(S):

Yes. Public highways and streets are generally defined as the entire width of the dedicated public right-of-way. Pursuant to Montana state law, the definition of vehicle includes a bicycle. Therefore, the provisions of Montana state law in section 61-8-356 MCA that establish a 120 hour or five (5) day parking limitation for parking on public streets includes the parking of bicycles within the public street rights of way, such as at a bicycle rack located within a public street right-of-way. The five (5) day parking time period regulation in section 61-8-356 MCA also applies to public property, including; but not limited to parks, public open space and public trails.

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/s/

Jim Nugent, City Attorney

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