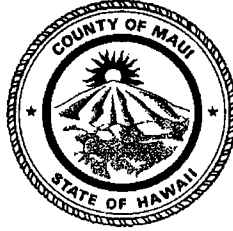


ALAN M. ARAKAWA
Mayor



PATRICK K. WONG
Corporation Counsel

EDWARD S. KUSHI
First Deputy

LYDIA A. TODA
Risk Management Officer
Tel. No. (808) 270-7535
Fax No. (808) 270-1761

DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
200 SOUTH HIGH STREET, 3RD FLOOR
WAILUKU, MAUI, HAWAII 96793
EMAIL: CORPCOUN@MAUICOUNTY.GOV
TELEPHONE: (808) 270-7740
FACSIMILE: (808) 270-7152

January 8, 2018

MEMORANDUM

TO: Don S. Guzman, Chair
Parks, Recreation, Energy and Legal Affairs Committee

FROM: Jerrie L. Sheppard, Deputy Corporation Counsel *JL Sheppard*

SUBJECT: **AMENDING SECTION 10.48.250, MAUI COUNTY CODE, RELATING TO PUBLIC BEACH ACCESS PARKING (PRL-38)**

RECEIVED
2018 JAN - 8 PM 3:43
OFFICE OF THE
COUNTY COUNCIL

We respond to your request dated January 3, 2018, regarding the authority of the Department of Parks and Recreation to remove vehicles parked in public beach access parking spaces on other than County of Maui property. Your questions were:

- 1. Does Section 10.48.250, MCC, authorize parks security officers to remove vehicles from a public beach access parking area on private property?**
- 2. Are there other Department of Parks and Recreation personnel authorized to remove vehicles from a public beach access parking area on private property?**
- 3. If your answer to either or both of the questions above is no, please recommend appropriate language to make the wording in Section 10.48.250C. accurate.**

Section 10.48.250 Maui County Code (MCC), is provided herewith as Exhibit "1". Section 10.48.250, subsections C and D, provide that vehicles parked in violation of Section 10.48.250, subsections A or B, may be removed pursuant to procedures in Section 10.48.210, MCC. (Subsection C pertains to police department, parks security officers and other authorized department of parks and recreation personnel, while subsection D pertains to owners of property with beach access parking.)

Section 10.48.210, MCC, is provided herewith as Exhibit "2". Section 10.48.210, MCC, sets forth the authority of "the police department and *owners of property.*" The group listed in Section 10.48.250C., MCC, as "parks security officers, and other authorized department of parks and recreation personnel" would be included as "owners of property" in Section 10.48.210A., MCC.

The proposed amendment to Section 10.48.250 MCC is provided herewith as Exhibit “3”. It adds time limits for beach access parking within a park or recreational facility, which correlate to the facility’s operating hours, and adds time limits for beach access parking on private property only from 6:00 a.m. to 9:00 p.m., unless otherwise specified in a land use agreement. The amendment also authorizes private land owners with public beach access parking to authorize use of those spaces at times other than the 6:00 a.m. to 9:00 p.m. window. Parks rules establish operating hours for each park and recreational area¹.

Your questions are answered as follows:

1. Does Section 10.48.250, MCC, authorize parks security officers to remove vehicles from a public beach access parking area on private property?

No, Section 10.48.250, MCC, does not authorize parks security officers to remove vehicles from a public beach access parking area on private property.

Section 13.04A.250, MCC, authorizes park security officers and other authorized Parks department enforcement personnel to issue citations for violations of Chapter 13.04A, MCC, and also for Section 10.48.250, MCC, “*when the violations occur on property under the control and management of the department [of parks and recreation].*” Because Section 10.48.250, MCC, authorizes removal of vehicles violating beach access parking areas, and Section 10.48.210 MCC authorizes “owners of property” to remove vehicles violating beach access parking areas, Parks security officers and other authorized department of parks enforcement personnel may cite or remove vehicles violating beach access parking on Parks Department property, but such personnel have no authority to enforce MCC public beach access parking restrictions on private property.

If located on parks property, parks security officers and other authorized Department of Parks and Recreation enforcement personnel may remove vehicles violating public beach access parking spaces as set forth in Section 10.48.250, MCC, pursuant to Section 10.48.210, MCC, because the Department of Parks and Recreation for the County of Maui would constitute an “owner of property” under that Section 10.48.210 MCC.

2. Are there other Department of Parks and Recreation personnel authorized to remove vehicles from a public beach access parking area on private property?

No, there are no other Department of Parks and Recreation personnel authorized to remove vehicles from a public beach access parking area on private property. As noted in the answer above, the authority of parks personnel is limited to violations which occur on parks properties.

3. If your answer to either or both of the questions above is no, please recommend appropriate language to make the wording in Section 10.48.250C. accurate.

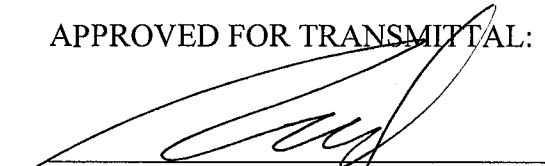
Subsections C and D of Section 10.48.250, MCC, require police, authorized parks personnel, and private property owners to comply with procedures in Section 10.48.210, MCC, to remove vehicles violating designated beach access parking. Section 10.48.210, MCC specifies the authority of the “police department and owners of property.” If desired, a change

¹ Title MC-10 Department of Parks and Recreation, Section 10-106-7, Hours of operation. (a) The opening and closing hours for each park and recreational facility are reflected in Table 1. ...

Don S. Guzman, Chair
Parks, Recreation, Energy and Legal Affairs Committee
January 8, 2018
Page 3

to Section 10.48.210, MCC, may clarify that “owners of property” include private property owners and the County of Maui, its respective department directors, or designated department personnel, which may clarify when referring between Section 10.48.250, MCC, and Section 10.48.210, MCC. This proposed change is provided for your consideration as Exhibit “4” attached hereto. Should you desire this to be drafted as an ordinance, I am happy to provide that.

APPROVED FOR TRANSMITTAL:



EDWARD S. KUSHI, JR.
First Deputy Corporation Counsel

LF 2017 0099
PRL-38 Response to 2018.01.08 Memo

10.48.250 - Public beach access parking.

- A. No person shall park any vehicle in any public beach access parking area unless using the beach for recreational purposes.

As used in this section, "recreational purposes" means hunting, fishing, swimming, boating, picnicking, hiking, nature study, water skiing, and viewing or enjoying historical, archeological, scenic, or scientific sites.

- B. All public beach access parking areas shall be posted with signs warning that vehicles will be towed away if the operators are using the parking area for other than beach recreational purposes.
- C. Members of the police department, parks security officers, and other authorized department of parks and recreation personnel, are authorized to remove, pursuant to the procedures of section 10.48.210, any vehicle parked in violation of subsection A. or B. of this section.
- D. Notwithstanding section 10.48.250C, the owner of the property on which any beach access parking area is located is hereby empowered to remove vehicles parked in violation of subsection A or B of this section, provided that said property owner complies with the procedures set forth in section 10.48.210.
- E. Any person who violates subsection A or B of this section shall, upon conviction, be subject to a fine of not more than \$100 for the first offense, and not more than \$250 for every subsequent offense.

(Ord. No. 3996, § 1, 2012; Ord. 413.233 § 1, 1990)

EXHIBIT " 1 "

10.48.210 - Removal—Procedure.

- A. Members of the police department and owners of property are authorized to remove a vehicle from a street, highway, or public beach access parking area to the nearest garage or other place of safety under the following circumstances:
1. When any vehicle is left unattended upon any bridge, viaduct, or causeway, or in any tube or tunnel where such vehicle constitutes an obstruction to traffic;
 2. When a vehicle upon a highway is so disabled as to constitute an obstruction to traffic and the person or persons in charge of the vehicle are by reason of physical injury incapacitated to such an extent as to be unable to provide for its custody or removal;
 3. When any vehicle is left unattended upon a street and is so parked illegally as to constitute a definite hazard or obstruction to the normal movement of traffic;
 4. When any vehicle is left parked in tow or tow-away zones during the time of restricted parking, designated by official signs specifying the days and hours of restricted parking on the streets or portions thereof described in section 10.48.220;
 5. When any vehicle is found to be parked in violation of section 10.48.250A or B, relating to public beach access parking.
- B. Whenever an officer or owner of property removes a vehicle from a street or public beach access parking area as authorized in this section and the officer or owner of property knows or is able to ascertain from the registration records in the vehicle the name and address of the owner thereof, such officer or owner of property shall immediately give or cause to be given notice in writing to such vehicle owner of the fact of such removal and the reasons therefor, and of the place to which such vehicle has been removed.
- C. Whenever an officer or owner of property removes a vehicle from a street and does not know and is not able to ascertain the name of the owner, or for any other reason is unable to give the notice to the owner or owner of property as provided in this section, and in the event the vehicle is not returned to the owner of the vehicle within a period of three days, then and in that event the officer or owner of property shall immediately send or cause to be sent a written report of such removal by mail to the county treasurer whose duty it is to register motor vehicles, the date, time, and place from which removed, the reasons for such removal and name of the garage or place where the vehicle is stored.
- D. The registered owner of the vehicle shall be liable for all reasonable expenses incurred by such removal and storage.

(Ord. 413.233 § 2, 1990; Ord. 413.110 § 1, 1978; Ord. 413.82 § 1(a), 1975; Ord. 413 § 10-13.18, 1965)

EXHIBIT " 2 "

ORDINANCE NO. _____

BILL NO. _____ (2017)

A BILL FOR AN ORDINANCE AMENDING SECTION 10.48.250,
MAUI COUNTY CODE, RELATING TO PUBLIC BEACH ACCESS PARKING

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Section 10.48.250, Maui County Code, is amended by
amending subsection A to read as follows:

"A. No person shall park any vehicle in any public beach access parking area unless using the beach for recreational purposes. If within a park or recreational facility parking area, parking shall be permitted during the park's operating hours. If on private property, parking shall be permitted from 6:00 a.m. to 9:00 p.m., unless otherwise specified in a requirement or condition of a land use approval; provided that, a private property owner may permit public beach access parking in such designated area at other times.


"Park" and "recreational facility" shall have the same meaning as those terms are defined in section 13.04A.030 of this code.

As used in this section, "recreational purposes" means hunting, fishing, swimming, boating, picnicking, hiking, nature study, water skiing, and viewing or enjoying historical, archeological, scenic, or scientific sites."

SECTION 2. New material is underscored. In printing this bill, the County Clerk need not include the underscoring.

SECTION 3. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:



JERRIE SHEPPARD
Deputy Corporation Counsel
County of Maui
LF 2017-1398
2017-11-20 Ordinance

EXHIBIT " 3 "

10.48.210 Removal - Procedure.

- A. Members of the police department and owners of property, including private property owners, the County of Maui, its respective department directors or designated department personnel, are authorized to remove a vehicle from a street, highway, or public beach access parking area to the nearest garage or other place of safety under the following circumstances:
1. When any vehicle is left unattended upon any bridge, viaduct, or causeway, or in any tube or tunnel where such vehicle constitutes an obstruction to traffic;
 2. When a vehicle upon a highway is so disabled as to constitute an obstruction to traffic and the person or persons in charge of the vehicle are by reason of physical injury incapacitated to such an extent as to be able to provide for its custody or removal;
 3. When any vehicle is left unattended upon a street and is so parked illegally as to constitute a definite hazard or obstruction to the normal movement of traffic;
 4. When any vehicle is left parked in tow or tow-away zones during the time of restricted parking, designated by official signs specifying the days and hours of restricted parking on the streets or portions thereof described in section 10.48.220;
 5. When any vehicle is found to be parked in violation of section 10.48.250A or B, relating to public beach access parking.
- B. Whenever an officer or owner of property removes a vehicle from a street or public beach access parking area, as authorized in this section and the officer or owner of property knows or is able to ascertain from the registration records in the vehicle the name and address of the owner thereof, such officer or owner of property shall immediately give or cause to be given notice in writing to such vehicle owner of the fact of such removal and the reasons therefor, and of the place to which such vehicle has been removed.
- C. Whenever an officer or owner of property removes a vehicle from a street and does not know and is not able to ascertain the name of the owner, or for any other reason is unable to give the notice to the owner or owner of property as provided in this section, and in the event the vehicle is not returned to the owner of the vehicle within a period of three days, then and in that event the officer or owner of property shall immediately send or cause to be sent a written report of such removal by mail to the county treasurer whose duty it is to register motor vehicles, the date, time and place from which removed, the reasons for such removal and name of the garage or place where the vehicle is stored.
- D. The registered owner of the vehicle shall be liable for all reasonable expenses incurred by such removal and storage.

(Ord. 413.233 § 2, 1990; Ord. 413.110 § 1, 1978; Ord. 413.82 §1(a), 1975; Ord. 413 § 10-13,18, (1965))

EXHIBIT " 4 "