

# CORRESPONDENCE MEMORANDUM

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Wisconsin Department of Transportation  
Office of General Counsel

Date: May 8, 2014  
To: Christopher R. Behrens, Assistant City Attorney, City of Appleton  
From: John Sobotik, Assistant General Counsel  
Subject: Parking in Designated Bike Lanes

You ask:

Appleton recently designated some bike lanes through residential areas. The residents living along the new bike lanes are upset about losing their street parking and some of our older people have been discussing allowing parking within the designated bike lanes during major holidays. Our traffic engineer asked whether the Common Council would even have the authority to allow vehicle parking in bike lanes at specified times.

If parking was strictly prohibited in bike lanes, I would have expected to find it along with other restrictions listed in sec. 346.53. Driving in a bike lane on the other hand is generally prohibited under 346.94(12). Are you aware of any other sections that either expressly state (or impliedly suggest) that parking in bike lanes is prohibited?

In the brief discussions I've had with our traffic engineer, we recognize there could be a host of other issues (such as signage) if the option to allow periodic parking in a bike lane even exists.

In a subsequent discussion, you indicated that the street in question is a City of Appleton local street that is not a state or connecting highway.

**Question Presented:** May motor vehicles legally park in a designated bike lane on the roadway portion of a local street? May WisDOT or local governments permit parking in designated bike lanes?

**Brief Answer:** No. Parking in a bicycle lane on a roadway is prohibited by law. A city may not adopt parking ordinances in direct conflict with State law. Nor may WisDOT permit parking in designated bicycle lanes under State law.

**Discussion.**

## 1. Uniformity of Traffic Regulations Statewide – WisDOT and Local Authority to Regulate Parking.

Traffic regulations are uniform statewide. To make traffic movements and vehicle operator expectations consistent across the state, absent contrary specific statutory authority, local authorities are prohibited from enacting ordinances in conflict with state laws related to traffic regulation:

349.03 Regulation by local authorities forbidden; exceptions.

(1) Chapters 341 to 348 and 350 shall be uniform in operation throughout the state. No local authority may enact or enforce any traffic regulation unless such regulation:

(a) Is not contrary to or inconsistent with chs. 341 to 348 and 350; or

(b) Is expressly authorized by ss. 349.06 to 349.25 or some other provision of the statutes.

Therefore, if Wisconsin Statutes authorize or prohibit parking in bicycle lanes, that statutory directive will control and may not be changed by local authorities absent specific statutory authority authorizing such regulation.

Wis. Stat. s. 66.0829 grants municipal governments authority to establish parking systems, "for the parking of vehicles, including parking lots and other parking facilities, upon its public streets or roads..." That statute, however, does not permit local authorities to adopt parking ordinances that would contradict state law.

Wis. Stat. s. 349.13 provides specific authority for WisDOT and local governments to regulate the stopping, standing or parking of vehicles. The general rule, set forth in Wis. Stat. s. 349.13(1e)(a), is that WisDOT or local governments can impose stricter parking restrictions than those provided for in state law.

349.13(1e)(a) The department with respect to state trunk highways outside of corporate limits and the local authorities with respect to highways under their jurisdiction, including state trunk highways or connecting highways within corporate limits, may, within the reasonable exercise of the police power, prohibit, limit the time of or otherwise restrict the stopping, standing or parking of vehicles beyond the prohibitions, limitations or restrictions imposed by ch. 346, except that they may not modify the exceptions set forth in s. 346.50.

This theme is expanded upon in Wis. Stat. s. 349.13(2), which specifically prohibits WisDOT or local authorities from granting parking privileges in contravention of Wis. Stat. ch. 346 except as specified in that subsection:

349.13(2) Except as provided in this subsection, neither the department nor local authorities may extend stopping, standing or parking privileges to areas where stopping, standing or parking is prohibited by ch. 346. The department and local authorities, with respect to highways under their respective jurisdictions as described in sub. (1e) may do any of the following:

- (a) Permit parking on sidewalk areas when such parking will not unduly interfere with pedestrian traffic.
- (b) Permit parking on the roadway side of other parked vehicles when such double parking will not unduly interfere with the flow of vehicular traffic.
- (c) Permit parking closer than 15 feet to the end of a safety zone when such parking will not unduly interfere with the flow of vehicular traffic.
- (d) Designate parking upon the left side of a one-way street or roadway instead of the right side or permit parking on both sides.
- (e) Designate angle parking on any roadway under its jurisdiction.
- (f) Permit the parking of any vehicle or of school buses only on the near side of specified highways adjacent to schoolhouses during specified hours if the governing body of the municipality where the schoolhouse is located directs by ordinance.

Nothing in 349.13(2) permits WisDOT or local authorities to specifically allow parking in bicycle lanes. The question, then, becomes whether parking in a bicycle lane is permitted under state law.

If Chapter 346 does not regulate the parking activity, local authorities may leave the activity unregulated or may impose regulations pursuant to their Wis. Stat. s. 349.13(1e)(a) authority. If Ch. 346 regulates parking in bike lanes, Wis. Stat. s. 349.13(2)(into) prohibits any ordinance that would contradict the state law. I will therefore evaluate whether parking within a bike lane would be inconsistent with the provisions of Wis. Stat. Ch. 346.

## 2. Bike Lane Features.

There are any number of highway roadway designs that facilitate bicycle operation. For purposes of this analysis, we will focus on bike lanes meeting the statutory definition of "bike lane:"

340.01(5e) "Bicycle lane" means that portion of a roadway set aside by the governing body of any city, town, village, or county for the exclusive use of bicycles, electric personal assistive mobility devices, or other modes of travel where permitted under s. 349.23 (2) (a), and so designated by appropriate signs and markings.<sup>1</sup>

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<sup>1</sup> Sec. 19-161 of the City of Appleton Municipal Code defines Bicycle lane consistently with this definition:

**Bicycle lane** means that portion of a roadway set aside by the governing body of any city, town, village or county for the exclusive use of bicycles or other modes of travel

As is clear from the definition in Wis. Stat. s. 340.01(5e), bicycle lanes are portions of the roadway set apart for the *exclusive* use of bicycles, Segways (electric personal assistive mobility devices) and other modes of travel permitted by local authorities. Local authorities establish bike lanes by a designating local ordinance under Wis. Stat. s. 349.23(1)(a). Once designated, Wis. Stat. s. 349.23(2)(a), permits local authorities to allow other modes of travel to be *operated* in a bike lane so long as such use is "not inconsistent with the safe use and enjoyment of the bicycle lane... by bicycle traffic."<sup>2</sup> Wis. Stat. s. 349.23(2)(a). That statutory section does not permit local authorities to authorize use of the bike lane by vehicles that are not being *operated*, such as parked cars.<sup>3</sup>

For purposes of this analysis, we will consider only the dedicated bike-only facilities, such as the bike lanes pictured below in the 300 block of West Franklin Street in the City of Appleton, shown in figure 1.

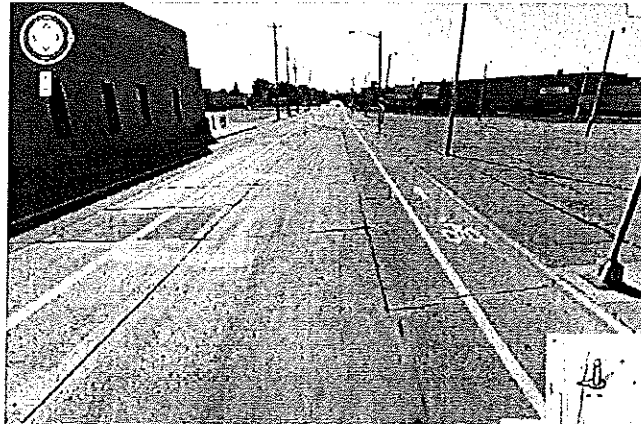


Figure 1

In its online training materials related to bicycle safety, "FHWA Course on Bicycle and Pedestrian Transportation"<sup>4</sup>, the Federal Highway Administration sets forth basic design criteria for bike lanes as follows:

#### 19.2 Bicycle Lane Widths and Construction Standards.

Bicycle lanes serve the needs of all types of cyclists in urban and suburban areas, providing them with their own travel lane on the street surface. The minimum width of a bike lane should be 1.5 meters (5 feet) against a curb or adjacent to a parking lane. On streets where the bike lane is adjacent to the curb and the curb includes a 1-foot to 2-foot gutter pan, bike lanes should be a minimum of 4 feet wide (width does not include the gutter pan, since bicyclists are typically unable to use this space).

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where permitted under W.S.A. §349.23(2)(a), and so designated by appropriate signs and markings. Bicycle lanes are designated on the following streets: the area bounded by Franklin Street on the north; Lawrence Street on the south, including any ramps leading down into Jones Park; Richmond Street on the west; and Drew Street on the east.

<sup>2</sup> The import of Wis. Stat. s. 349.23(2)(a) is more limited than it appears at first reading. *Motor* vehicle use of bicycle lanes is severely restricted under the traffic code by Wis. Stat. s. 346.94(12) which is discussed at some length in this memo. Non-motor vehicle traffic, such as horse-pulled carriages, and in-line skates may be authorized for general use in bicycle lanes under this municipal authority.

<sup>3</sup> "Operate" for purposes of the motor vehicle code other than the drunk driving law, means to set a vehicle in motion. See e.g. See *Monroe County v. Kruse*, 76 Wis. 2d 126, 250 N.W.2d 375 (1977); *State v. Hall*, 271 Wis. 450, 73 N.W.2d 585 (1955); *Milwaukee v. Richards*, 269 Wis. 570, 69 N.W.2d 445 (1955). A parked car is not being "operated" because, by definition, it is parked and not moving.

<sup>4</sup> Available online at [http://safety.fhwa.dot.gov/ped\\_bike/univcourse/pdf/swless19.pdf](http://safety.fhwa.dot.gov/ped_bike/univcourse/pdf/swless19.pdf).

AASHTO, the American Association of State Highway and Transportation Officials recommend a 6-foot dedicated bicycle lane, again outside the gutter pan, on higher speed roadways. Additional width is recommended if drain inlets or utility covers extend into the bike lane.

So the dedicated bike lane is generally 4 to 6 feet beyond the gutter pan when along a curb as pictured above. When separated from the curb by a line of parked cars, bus lane, or other use, lane width is generally 5 to 6 feet as shown in this photo, where bicyclists are clearly separated from parked vehicles and traffic by a white lines denoting the edges of the bike lane, as shown to the right of the travel lane in figure 2:

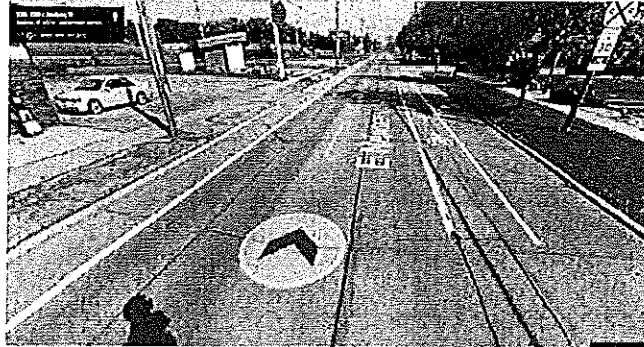


Figure 2

In contrast, this opinion does not discuss bicycle "friendly" facilities such as this extra-wide parking lane shown below in figure 3.



Figure 3

While the designers have clearly left space for bicycles to pass to the left of parked cars on the facility shown in figure 3, there is no designated bicycle lane for bicycles travelling in the direction of travel. Bicyclists operating in the opposite direction at the place shown in this photo, in contrast, have a dedicated bicycle lane (although the striping is difficult to see).

This opinion does not consider and is not intended to cover lanes that are not dedicated to exclusive use of bicycles and which clearly contemplate share use, as appears in figure 3 above. Such facilities fall outside the statutory definition of a "bicycle lane." Nor does this opinion consider or evaluate mass transit ways established under Wis. Stat. s. 349.22, in which bicycles may be permitted by ordinance to travel in mass transit vehicles lanes.<sup>5</sup>

<sup>5</sup> 349.22 Authority to establish mass transit way.

(1) The department with respect to the state trunk highway system may by order, and any local authority with respect to highways under its jurisdiction may by ordinance, designate a portion of any highway under its jurisdiction as a mass transit way, designate the type and character of vehicles which may be operated thereon and specify those conditions under which any of said vehicles may be operated thereon...

### 3. Chapter 346 of the Wisconsin Statutes Prohibits Parking in a Bike Lane.

Bicycle lanes are becoming a common feature of Wisconsin highway facilities. Wis. Stat. s. 84.01(35) and Ch. Trans 75 encourage the construction of bike facilities on highways constructed with State funds. Bike lanes are part of the roadway on a highway under Wis. Stat. s. 340.01(5e):

As discussed above, under Wis. Stat. s. 340.01(5e), bicycle lanes are portions of the roadway set apart for the *exclusive* use of bicycles, Segways (electric personal assistive mobility devices) and other modes of travel permitted by local authorities. Local authorities establish bike lanes by a designating local ordinance under Wis. Stat. s. 349.23(1)(a). Once designated, Wis. Stat. s. 349.23(2)(a), permits local authorities to allow other modes of travel to be *operated* in a bike lane so long as such use is "not inconsistent with the safe use and enjoyment of the bicycle lane... by bicycle traffic." Wis. Stat. s. 349.23(2)(a)<sup>2</sup>. That statutory section does not permit local authorities to authorize use of the bike lane by vehicles that are not being *operated*, such as parked cars

Parked cars present a great hazard and danger to bicyclists. First, to avoid a parked car that is obstructing a bicycle lane, a bicyclist must merge into the traffic lane with motor vehicle traffic. Motor vehicle drivers may not expect a slower moving bicycle to merge into their lane, and the chance for a collision is greatly increased. In addition, the presence of intermittently parked motor vehicles in the bike lane will often result in bicyclists remaining in that traffic lane. Once they establish position in that lane, it is safer for them to remain in that position, visible to traffic, than to dodge back and forth between the traffic lanes and the portion of the roadway being used for parking. Motor vehicles following a bicyclist that does dodge from between parked vehicles may well not notice the bicyclist's presence if view of the cyclist is obstructed by parked cars until the cyclist "pops" out to pass parked cars. That danger, of course, would be exacerbated during hours of darkness. In addition, it should be remembered that bicyclists need to leave 4 to 5 feet between themselves and a parked car in order to avoid being severely injured by an inopportunistly opened car door.

The use of a bike lane by parked cars, then, is clearly inconsistent with the safe use and enjoyment of the bicycle lane by bicyclists. They cannot use the bike lane at all when the parked car obstructs the lane; movement into motor vehicle traffic lanes from the bike lane, and back, is unsafe; and the opening of car doors by parked vehicle passengers presents an additional safety risk.

So, the general rule of the traffic code, that no vehicles, other than bicycles, Segways and other specific vehicles allowed to travel on a bike lane may be on a bike lane, is consistent with providing a safe lane of travel for bicycles. Unless there is contrary authority in the statutes more specifically authorizing a vehicle to be in the bike lane, use of the bike lane by any other type of vehicle is prohibited as violating that general rule.

There is a specific exception for cars that are in motion. Cars are expressly prohibited from driving upon a bicycle lane except that they are permitted to cross over and upon bike lanes to reach parking spaces, to enter driveways, or to prepare for a turn:

346.94(12) DRIVING ON BICYCLE LANE OR BICYCLE WAY. No operator of a motor vehicle may drive upon a bicycle lane or bicycle way except to enter a driveway, to merge into a bicycle lane before turning at an intersection, or to enter or leave a parking space located adjacent to the bicycle lane or bicycle way. Persons operating a motor vehicle upon a bicycle lane or bicycle way shall yield the right-of-way to all bicycles and electric personal assistive mobility devices within the bicycle lane or bicycle way.

This statute directly regulates the question you present – whether vehicles may park upon a bicycle lane. Wis. Stat. section 346.94(12) necessarily prohibits parking on a bicycle lane because to park on the bicycle lane, one would have to operate that motor vehicle upon the bicycle lane. The exception for parking spelled out in the statute is very specific: any person driving upon a bicycle lane to park must "enter or leave a parking space located *adjacent to the bicycle lane*..." The statute does not permit the person to enter or leave a parking space *upon* a bicycle lane, but only spaces *adjacent* to the bicycle lane, such as the parking area shown in figure 2. This is consistent with the general proposition that the bicycle lane is for the exclusive use of bicycles and like vehicles. Figure 2 shows a highway facility where such parking is available on the curb side of a bicycle lane and can be used for motor vehicle parking.

## Conclusion.

In general, parking on local streets is left to the regulatory discretion of local governments. Local ordinances may not, however, contradict the motor vehicle code absent specific authority to do so. Wis. Stat. s. 349.03. Wis. Stat. s. 349.13(1e)(a) grants WisDOT, with respect to state trunk highways outside of corporate limits, and local authorities with respect to highways under their jurisdiction, authority, within the reasonable exercise of the police power, to prohibit, limit the time of or otherwise restrict the stopping, standing or parking of vehicles beyond the prohibitions, limitations or restrictions imposed by ch. 346. The statutes do not, however, grant WisDOT or local authorities general authority to liberalize the parking and traffic limitations imposed by Ch. 346. In fact, Wis. Stat. s. 349.13(2)(intro) generally prohibits WisDOT and local authorities from making places ineligible for parking under Ch. 346 into parking areas in contravention of Ch. 346. Very specific exceptions to that general rule are set forth in Wis. Stat. s. 349.13(2); those exceptions do not allow WisDOT or local authorities to permit motor vehicle parking in bicycle lanes.

Chapter 346 prohibits the operation of motor vehicles upon, and therefore operation for the purposes of parking upon, a bicycle lane. Motor vehicles may enter a bicycle lane to park in spaces adjacent to the bicycle lane, but not upon it. This is consistent with the statutory definition of "bicycle lane" in Wis. Stat. s. 340.01(5e) which provides that bicycle lanes are for the exclusive use of bicycles and like vehicles.

Because Chapter 346 directly prohibits operation and parking of motor vehicles in bicycle lanes, and because local authorities are generally prohibited from adopting ordinances in contravention of the state traffic code or permitting parking in violation of Chapter 346, local authorities may not, by ordinance or other act, permit motor vehicle parking within a dedicated bicycle lane. Similarly, because WisDOT may not act in abrogation of the same provisions of Wisconsin law, WisDOT may not permit parking within a bicycle lane.