

To: SJ BPAC (San Jose Bicycle Pedestrian Advisory Committee)

From: Akos Szoboszlay. 408 221 0694; email: expressway [“at” symbol] akos.us

Date: 10/28/2024

Subject: Speech to SJ BPAC to request City Council to promptly repeal SJMC 11.32.070

Last month, I gave examples, with photos, of how San Jose’s ordinance prohibiting pedestrians along expressways has resulted in many pedestrian fatalities.

Currently, County Roads is re-writing the County Expressway Plan, and they stated they will impose *more* pedestrian prohibitions. The sooner this ordinance is repealed, the less their ability to do that. So, I am asking you to agendize this as an emergency item, and request City Council to repeal it.

The City Council, at my request, voted 11 to 0 to repeal the bicycle prohibition in 1989, despite huge SJ DOT opposition. The City Council told staff to write a draft revised ordinance. I informed SJ DOT that State law only enabled prohibiting pedestrians from freeways. So, SJ DOT wrote the ordinance to be completely ambiguous, to circumvent State law. You cannot tell where, or even if, pedestrians are prohibited. SJ DOT did this to enable County Roads to interpret the ordinance any way they want, to keep their illegal signs posted. Despite their attempt to violate State law, I forced all these signs removed from Capitol Expressway, in 1997. This forced County Roads to comply with path creation and bridge use requirements of the BOS.

Mr. Ryan Smith states in his recent email to me regarding this ordinance: “There are no [road] portions ... where this applies.” He is correct! The ordinance is not applicable, anywhere. Please read the ordinance, attached, and promptly take action for its repeal. This is *much easier* than endlessly arguing with County Roads about the ambiguity.

See appendices for SJMC 11.32.070; the BOS path creation order; and 2003 County Expressway Plan paragraph that proves the BOS supports *both* shoulder and path use.

Links: (Note: Going to the first link would make other links clickable.)

This handout: ModernTransit.org/2024/SJBPAC-ord.pdf

My handout re: **pedestrian fatalities**, on 9/23/2024: ModernTransit.org/2024/SJBPAC.pdf

My letter to SJ DOT Director Ristow provides **detail**: ModernTransit.org/2024/Ristow.pdf

My **rebuttal** to County Roads Director Freitas: ModernTransit.org/2024/rebuttal.pdf

Timeline of historical events for expressways: ModernTransit.org/expy/#timeline

Expressway Topics, Links page by Akos Szoboszlay, Modern Transit Society:

ModernTransit.org/expy

SJ BPAC letter to City Council in 2006: <http://moderntransit.org/expy/sj-bpac-letter.pdf>

11.32.070 County expressways within city limits - Use restrictions

- A. For purposes of this section, "county expressway" means a county owned or maintained facility, or portion thereof, designated as an expressway or freeway [Note 1] by the county of Santa Clara, which is located within the city limits and under the traffic control jurisdiction of the City of San José and which is designed primarily for traffic movement, providing no right or easement of access [Note 2], or providing access only at intersecting streets, to or from abutting properties.
- B. No person, other than peace officers, firefighters, or emergency services personnel acting in the performance of their duties, shall walk or run upon any county expressway which is posted [Notes 3 and 4] in accordance with Subsection D of this section. However, the driver or passengers of a disabled vehicle stopped on a county expressway may walk to the nearest exit, in either direction, on that side of the expressway upon which the vehicle is disabled.
- C. No person shall drive any livestock upon any county expressway.
- D. When pedestrians are prohibited [Note 5] on any county expressway pursuant to this section, signs shall be posted providing notice of such prohibition as required [actually, enabled] by California Vehicle Code Section 21960.
- E. Nothing in this section is intended to prohibit any pedestrian from crossing any county expressway while traveling on any street, highway, or other public way where such pedestrians are otherwise permitted.

Notes by Akos Szoboszlay:

Note 1: The word "freeway" was placed by SJ DOT and shows their intention to turn expressways into freeways. This is the real reason for SJ DOT opposing bicyclists and pedestrians, to make it easier for County Roads to construct a freeway in the future.

Note 2: State law stipulated that to prohibit pedestrians, 100% of abutting property owners must have signed away their right to access their property, and the ordinance reiterates that. To see if this ordinance is applicable, a pedestrian would have to go to the County building (at 70 W. Hedding St.) and go thru the property records. This alone makes the ordinance not enforceable, because finding where pedestrians are actually prohibited is onerous.

Note 3: There is a fault in logic by omitting the "initial conditions." It states pedestrians are prohibited where signs are posted, and signs must be posted where pedestrians are prohibited. There is no underlying document that shows where, or even if, pedestrians are prohibited.

Note 4: Furthermore, the posting of illegal "Pedestrians Prohibited" signs by County Roads means prohibitory signs cannot be used to define where pedestrians are prohibited. I proved County Roads posted illegal signs by forcing their removal on Capitol Expressway in 1997, and also in other cities. (Having a full-time job as an electrical engineer, I did not devote more time to force sign removals on San Tomas and Lawrence in San Jose, considering that the BOS, at my request, already required bike lanes (1989), paths (1991), and future sidewalks (2008) along *all* expressways.)

Note 5: Does not state the location. No prohibitory ordinance of any other city omits the location. Currently, 3 city ordinances prohibit bicyclists and 7 prohibit pedestrians from using expressways, due to County Roads and city traffic engineering departments repeatedly trying to eliminate them, for decades. [See Timeline history in Links.] These highway and traffic engineers simply ignored State law that was supposed to prevent this illegal discrimination against people who do not use motor vehicles.

BOS path creation order and its funding (scan) was approved:

Santa Clara County Transportation Agency

An Agency of the County of Santa Clara

1570 Old Oakland Road, San Jose, CA 95131

PAGE 1 of 3 (Staff report)
S.D. ALL

Prepared by BRUCE *zab*
Reviewed by SHIELDS
Submitted by MONTINI
APPROVED: DIRECTOR _____

Quote 1

DATE: August 13, 1991

TRANSIT DISTRICT BOARD: Agenda Date _____ Item No. _____
COUNTY BOARD OF SUPERVISORS: Agenda Date: Aug. 20, 1991 Item No. _____
TRANSPORTATION COMMISSION: Agenda Date _____ Item No. _____

zab FROM: Scotty A. Bruce, Deputy Director
Design and Construction

SUBJECT: POLICY FOR BICYCLE AND PEDESTRIAN USAGE OF EXPRESSWAYS

RECOMMENDED ACTION:

- o Adopt the Pedestrian Use portion of the attached policy entitled "Bicycle and Pedestrian Usage of Expressways."
- o Approve the proposed new program to provide pedestrian pathway facilities along the expressway system at the annual level of \$75,000.

FISCAL IMPLICATIONS:

The incremental costs to implement the proposed policy are as follows:

- o Maintenance: \$5,000 for FY 1991-92, and increasing at an annual rate of \$5,000.
- o Path Development: \$75,000 annually

Paragraph (scan) regarding shoulder and path use

Here is visual proof that the BOS supports pedestrian use of “shoulder or path facilities” on expressways. It is a scan of the BOS-approved 2003 County Expressway Plan, page 93, and includes the photo:

Wide Shoulder or Path within Expressway Right-of-Way – In locations where there are no sidewalks or parallel facilities and there is no major demand for pedestrian travel, these shoulder/path facilities can serve as emergency walkways and for occasional pedestrian use. No projects are recommended for these locations; however, landscaping needs to be kept trimmed back at intersection areas and along the travel way so pedestrians do not have to enter the travel lane. Landscaping maintenance costs are included in the Maintenance and Operations Element.



Vehicle Code (CVC) 21966 and pedestrian use of bike lanes

The Vehicle Code 21966 allows pedestrians to use bike lanes where there is no “adjacent adequate pedestrian facility.” The BOS required bike lanes along all expressways in 1989, and added intersection details in the 2003 Plan. Pedestrian use of bike lanes is a temporary measure until the paths, required by the BOS, are created by County Roads. History has shown that County Roads would do this *only after* the prohibitory ordinance is repealed, or they were forced to remove their illegal signs.

Note that for any topic that is mentioned in the Vehicle Code, that action is permitted unless expressly prohibited. Mentioning prohibiting pedestrian use of the bike lane where there is an “adjacent adequate pedestrian facility,” therefore, allows use of the bike lane where such facility is lacking. It also states that “a police officer ... shall not stop a pedestrian ... unless ... there is ... danger of collision” Practically speaking, no pedestrian would want to walk in a bike lane if there is an “adjacent adequate” path or sidewalk because they feel more secure there. If they walk in the bike lane, they always walk adjacent to the curb while most bicyclists ride near the bike lane line.

Here is the legal text of CVC 21966:

(a) A pedestrian shall not proceed along a bicycle path or lane where there is an adjacent adequate pedestrian facility.

(b) (1) A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, shall not stop a pedestrian for a violation of subdivision (a) unless a reasonably careful person would realize there is an immediate danger of a collision with a moving vehicle or other device moving exclusively by human power.

(2) This subdivision does not relieve a pedestrian from the duty of using due care for their safety.

(3) This subdivision does not relieve a bicyclist from the duty of exercising due care for the safety of any pedestrian within the roadway.