



City of North Port

Office of the City Attorney

4970 City Hall Boulevard
North Port, Florida 34286
(941) 429-7260
www.cityofnorthport.com

To: Sherry Willette-Grondin, Planning Division

From: Michael Golen, Assistant City Attorney

Through: Amber L. Slayton, City Attorney

Date: May 3, 2018

Re: Request for Legal Services – Ordinance No. 2018-09, Parking

The above-referenced Request for Legal Services has been reviewed.

The attached revised Ordinance will be legally correct as to form once the issues identified below are addressed. Staff has informed the City Attorney's Office that they will address the identified issues with the Commission and request further direction. The following items must be addressed in order for the Ordinance to be legally correct as to form. Once the items are addressed, the revised Ordinance will require additional review.

The weight limits provided for in this Ordinance are in conflict with those provided for in section 74-51 of the City Code. It is recommended that this Ordinance be brought into conformity with the existing Code language. Should the Commission decide not to conform this Ordinance to the existing Code language, it is recommended that the language in section 74-51 be amended to reflect the weight limits provided for by this Ordinance. This can be done by amending this Ordinance to include the change or by doing so in a stand-alone ordinance. In either case, a future amendment is recommended and all advertising requirements should be followed in the process.

Additionally, the vehicle weights identified at Lines 98 and 115 are identified as "26,001 pounds or more," however, the vehicle weight identified at Line 107 is "16,000 pounds or more." It is recommended that these amounts be parallel, either by reducing to 26,000 or increasing to 16,001.

The following items must be addressed in order for the Ordinance to be legally correct as to form:

1. Section (a)(4) – It is recommended that the term “Stacked Parking” be changed to “Grouped Parking.” Stacked parking has a specific use and meaning within city planning; grouped parking better describes the type of parking being defined.
2. Section (a)(6) – The inclusion of the language “a device or conveyance” in the definition of “Motor Vehicle” expands the definition very broadly. It could possibly include things beyond what is intended. Wherever Florida Statutes defines a term, it is recommended to mirror that definition as closely as possible. The following two sections of Florida Statutes provide definitions for motor vehicle:

Section 316.003(40), defines a Motor Vehicle as “a self-propelled vehicle not operated upon rails or guideway, but not including any bicycle, motorized scooter, electric personal assistive mobility device, personal delivery device, swamp buggy, or moped.”

Section 320.01(1), defines a Motor Vehicle as:

- (a) an automobile, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination, or any other vehicle operated on the roads of this state, used to transport persons or property, and propelled by power other than muscular power, but the term does not include traction engines, road rollers, personal delivery devices as defined in s. 316.003, special mobile equipment as defined in s. 316.003, vehicles that run only upon a track, bicycles, swamp buggies, or mopeds.
- (b) A recreational vehicle-type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle.

It is recommended that the definition in the Ordinance more closely reflect the language in Florida Statute. At a minimum, the Ordinance definition should include a reference to the statutory definitions.

3. Section (a)(9) – The term “Race Car” is not used anywhere in the Ordinance. It is recommended that this definition be deleted.
4. Section (a)(12) – The definition of “Semitrailer” sets the minimum empty vehicle weight of this type of vehicle at “26,001 pounds and over.” By setting the vehicle weight at this level, this section of the Code will be in conflict with section 74-51, which provides the following:

It shall be unlawful for any person to operate any vehicle on any city roadway when the maximum gross weight imposed on the city roadway exceeds 12,000 pounds nor on any city roadway where the weight of the vehicle permitted on such roadway is limited by sign, except for the purpose of making delivery or picking up a load, in which case such vehicle may be driven on such roadway for not more than the minimum distance necessary for that purpose. Maximum gross weight shall be

verified by the police officer by means of a bill of lading in the possession of the driver of subject truck. (emphasis added.)

The maximum weight permitted on most City roads, unless otherwise posted, is 12,000 pounds maximum gross weight. The existing local residential roadways are not built to withstand repetitive vehicle traffic with a maximum gross weight exceeding 12,000 pounds. The proposed language would allow vehicles exceeding this limit to utilize residential roadways in a repetitive nature, which could potentially degrade the roadway at an accelerated rate.

5. Section (a)(15) – Under the proposed Ordinance language, to be defined as a “Truck” a vehicle’s empty vehicle weight must be 16,000 pounds or more. There is no definition for those vehicles that weigh less than 16,000 pounds; additionally, the current definition will include vehicles that are not trucks.

Florida Statutes, section 320.01(9), defines Truck as follows:

“Truck” means any motor vehicle with a net vehicle weight of 5,000 pounds or less and which is designed or used principally for the carriage of goods and includes a motor vehicle to which has been added a cabinet box, a platform, a rack, or other equipment for the purpose of carrying goods other than the personal effects of the passengers.”

It is recommended that the definition in the Ordinance more closely reflect the language in statute. At a minimum, the Ordinance definition should include a reference to the statutory definition.

Additionally, please see the analysis in Paragraph 4 above regarding the conflict this weight will have with section 74-51. A vehicle weight of 16,000 pounds is not currently allowed to drive within the City.

6. Section (a)(16) – The definition of “Truck Tractor” currently sets the minimum empty vehicle weight of this type of vehicle at “26,001 pounds and over.” By setting the vehicle weight at this level, this section of the Code will be in conflict with section 74-51. Please see the analysis in Paragraph 4 above regarding the conflict this weight will have with section 74-51. A vehicle weight of 26,001 pounds is not currently allowed to drive within the City.
7. Section (a)(17) – The proposed definition of “Vehicle” is very broad and may include things that are not intended. Wherever Florida Statutes defines a term, it is recommended to mirror that definition as closely as possible. Florida Statutes, section 316.003(97), defines a “Vehicle” as follows:

Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except personal delivery devices and devices used exclusively upon stationary rails or tracks.

8. Section (b) – The proposed language of the Ordinance allows a vehicle in excess of 12,000 pounds to be parked on a residential lot. The Division of Public Works has indicated that this may cause serious damage to the storm water drainage swales.
9. Section (b)(1) – When lots are “combined,” the process is accomplished as an administrative action for accounting purposes through the property appraiser. If the City’s codes allow it, it also may be for issuance of building permits. The combining of lots does not legally alter the lot lines; they are still two distinct parcels. It is recommend that the Ordinance be modified to read: “administratively combined by the Sarasota County Property Appraiser.”

However, if “combined” refers to the legal merging of lots, which does legally modify the lot lines, it is recommend that the language be changed to: “consolidated by legal instrument on file in the official records of the Sarasota County Clerk of the Circuit Court.”

10. Section (b)(1) – The requirement of “at least 80% opaque” will be difficult to enforce due to its subjective nature. Something easier to understand may be better. For example: more than half, 100%, or everything but the tires, etc.
11. Section (d) – The reference to “obstruction of sight visibility” is vague and ambiguous. A parked vehicle will always cause the obstruction of ones view. To ensure proper enforcement of this restriction the following alternative language is recommended:

No recreational vehicle, boat, bus, truck, truck tractor, trailer, or semitrailer shall be parked on any improved public right-of-way within any district zoned for residential use except during the course of a delivery, pick-up, or service activity, provided that on-coming traffic and pedestrians can be safely observed and that any ~~there is no~~ obstruction of sight visibility from adjacent driveways or roadways does not cause a safety hazard. In no case shall any vehicle or boat parked on a residential lot interfere with the use of any sidewalk.

12. Section (e) – Please see Paragraph 11 above regarding amending this language.

Additionally, the proposed Ordinance will permit angled and grouped parking directly adjacent to the roadway. The Division of Public Works believes that by permitting this type of parking, vehicles parked across the center of the storm water drainage swale may impeding the hydraulic function of the storm water system and may cause rutting to the swale during the rainy season. This will impact the Operations and Maintenance Division staff as they will be required to respond to citizen requests for services and make determinations on the cause of the rutting and the responsible party (Resident or Department of Public Works). It is recommended that only parallel parking be permitted in these locations.

The Division of Public Works also suggests that the prohibition be expand to include no parking on a multi-use paths and trails.

13. Section (e)(3) – Although the unpaved or unimproved rights-of-way area adjacent to a residential lot contains the City’s easements, the City cannot grant permission to the public to park on this unpaved or unimproved right-of-way area when it is located on private property. It is recommended that the following language be removed from this section: “for more than four hours.”

Additionally, the Division of Public Works has indicated that traversing City storm water drainage swales in unpaved and unimproved areas will cause damage to the storm water drainage swales. The flowline/proper grade of the storm water drainage swales will be negatively impacted especially during the rainy season. This will also affect the storm water flow for all other residents upstream.

14. Section (h) – It is recommended that this section be clarified to describe what vehicles are considered “not appropriate in residential districts” due to size and length. Sections 74-51 and 74-55 of the Code speak to truck traffic and vehicle weights permitted on City streets, but the Code is silent as to size and length. If this section is meant to go beyond 74-51 and 74-55, then it needs to clarify what is meant by “not appropriate in a residential district” and why.

Florida Statutes, section 316.515, provides the maximum width, height and length for vehicles. It is recommended that references to “size and length” be deleted or, in the alternative, reference to Florida Statutes be included.

15. Section (h)(1)a. – The inclusion of “Truck Tractor” in this section is in conflict with the permissions granted by the proposed sections (b) and (b)(1) of the Ordinance. Because the parking and storage of a truck tractor is addressed by section (b), it is recommended that truck tractor be removed from this section.
16. Section (h)(1)g. – The inclusion of “Bus” in this section is in conflict with the permissions granted by the proposed section (b)(1) of the Ordinance. Because the parking and storage of buses is addressed by section (b)(1), it is recommended that bus be removed from this section.
17. Section (h)(3) – The “city street weight limits” referenced in this section is set in section 74-51 of the code and conflicts with the weight limits provided for within this Ordinance. It is recommended that the conflict in weight limits be eliminated by conforming this Ordinance to the requirements provide for in section 74-51 of the code.
18. Section 74-85(b) – Please see Paragraph 12 above regarding amending this section to include “angled or grouped” parking. For the reasons provided by the Division of Public Works, the addition of angles and grouped parking to this section is not recommended.

Please let me know if there are any questions, comments, or concerns from your department. Additional review will be required once the provisions in this memo are addressed.