FMCA'S PARKING RIGHTS MANUAL & GUIDE ©
REVISED – 2003

PREPARED BY:

FMCA'S GOVERNMENTAL AND LEGISLATIVE AFFAIRS COMMITTEE WITH THE INPUT OF FMCA'S CORPORATE ATTORNEY

FAMILY MOTOR COACH ASSOCIATION, INC.
8291 Clough Pike
Cincinnati, Ohio 45244
Phone: 800-543-3622
membership@fmca.com

TABLE OF CONTENTS

FMCA'S PARKING RIGHTS MANUAL & GUIDE

REVISED 2003

The legislative bodies of States, counties, townships, cities, towns and villages along with community associations, homeowners' associations and architectural control committees are passing ordinances/restrictions prohibiting or regulating the outside parking and storage of unoccupied motorhomes, house trailers, campers, etc. Many of these ordinances/restrictions are fair and reasonable, others are not. The purpose of this handbook is to assist FMCA members in their approach to prevent the passage of unreasonable ordinances/restrictions and in obtaining a livable ordinance/restriction when confronted with attempts to regulate outside storage and parking of their rigs.

An early, polite and sensible dialogue with the regulating body, in most cases, will result in regulation that will be acceptable to RV owners.

This publication is not the final answer, but it is a guide giving information as to the problems faced, experience in solving the problem, and sources that you might go to for help, including the FMCA National Office.

For ease of reading, the general body of this Manual and Guide is in regular typeface. For technical reference, in a different typeface, we have provided both sample ordinances in Appendage A as well as case citations with general descriptions for the related subject/points. This will allow members to review the general body and then refer back to the relevant technical reference items.

SUGGESTED COURSE TO FOLLOW IF YOU ARE CONFRONTED WITH A PROPOSED ORDINANCE/RESTRICTION PROHIBITING OR REGULATING OUTSIDE PARKING AND STORAGE OF YOUR MOTORHOME

1. Establish an understanding of what the problem is and why. Determine who has control over the problem. It may be important to contact your appropriate elected or appointed official, or in cases involving community associations, the president or chairman of the board of directors. Be sure to accumulate all the evidence and facts in favor of preventing or limiting the regulation and especially in showing that any present or proposed regulation is too restrictive, and therefore, unreasonable.

2. Keep in touch with the FMCA National Office. Write, call or e-mail the Member Services Department, 8291 Clough Pike, Cincinnati, OH 45244; 800-543-3622; membership@fmca.com. Please advise them at the earliest possible moment of your need for assistance. Give as much information as possible, including furnishing copies of existing and proposed regulations.

3. Present your side of the issues to the controlling body indicating a willingness to help them in any way you can; by this we mean present them with ordinances/regulations that have worked in other places. We have hereafter set out such ordinances/regulations.

4. If your presentation fails to persuade, organize all local people who could be impacted by the problem. FMCA can assist you in contacting other FMCA members in your area. It might be necessary to accumulate some financial support for your endeavor for possible printing or other related expenses.

5. If necessary, use a knowledgeable person to present your side of the issues. This might be an FMCA sub-committee volunteer, a person closely associated with local government, or a local attorney with a land use practice. For technical references, see the case law section of this guide book beginning on page ??.

6. Avoid court action if at all possible.

GOVERNMENTAL AND OTHER RESTRICTIONS ON THE PARKING OF MOTORHOMES ON PRIVATE PROPERTY

I. INTRODUCTION

Motorhome owners, as well as owners of trailers, boats, trucks and commercial vehicles, may from time-to-time face restrictions on their right to park or store their vehicles on private residential property. Those restrictions may take the form of a zoning regulation, municipal law (other than zoning), restrictive covenant or landowner association regulation.

FMCA has assembled the following primer on restrictions on the parking of motorhomes on private residential property. It gives a general overview of how and under what circumstances municipalities and landowner associations may restrict the parking of motorhomes. It also discusses cases where private landowners have been able to successfully challenge parking restrictions.

II. AUTHORITY OF MUNICIPALITIES TO REGULATE AND CONTROL LAND USE THROUGH ZONING

It is well-recognized by federal and state courts that municipalities and other local government have significant authority to regulate private property through zoning, if such regulation protects the health, safety, and welfare of the community. An ordinance must be reasonable and not arbitrary. The reasonableness of an ordinance is recognized as the test of its legality. One tool

to use in fighting zoning ordinances is to closely examine the language of the ordinance to determine if it actually applies to them and the use of their property. Courts will scrutinize the language and construe it narrowly since it does take away private property rights. The cases below are illustrative.

A. <u>Authority to Adopt Zoning</u>.

- *Grant v. County of Seminole*, 817 F.2d 731 (11th Cir. 1987): The law is well settled that legislative zoning ordinances are permissible, constitutional uses of police power and are not reviewable by district courts unless they are clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, , or general welfare. Furthermore, zoning regulations of a quasi-legislative zoning commission are presumed constitutionally valid.
- *City of Brookside Village v. Comeau*, 633 F.W.2d 790 (Texas Sup. Ct. 1982): Zoning regulation is a recognized tool of community planning, allowing a municipality, in the exercise of its legislative discretion, to restrict the use of private property. Judicial review of a municipality's regulatory action is necessarily circumscribed as appropriate to the line of demarcation between legislative and judicial functions. A city ordinance is presumed to be valid and the courts have no authority to interfere unless the ordinance is unreasonable and arbitrary, a clear abuse of municipal discretion. The party attacking the ordinance bears an extraordinary burden to show that no conclusive or even

controversial or issuable fact or condition existed that would authorize the municipality's passage of the ordinance.

- *Patchak v. Township of Lansing*, 361 Mic. 49, 105 N.W.2d 406 (1960): The legal principle is firmly established that zoning ordinances, when reasonable in their provisions, are a valid exercise of the police power. The reasonableness of such an ordinance is recognized as the test of its legality. In the application of the test indicated, it necessarily follows that each case of this character must be determined on the basis of its own facts and circumstances. It must also be borne in mind that the presumption of validity attends zoning regulations, and that the burden of proof is on the one challenging such an ordinance to establish his claim. It is the duty of the plaintiffs, who challenge the zoning classification, to show by competent evidence that the regulation has no substantial relation to the public health, , safety or general welfare.

B. <u>Requirements of Lawful Zoning</u>.

- *Recreational Vehicle Association v. Sterling Heights*, 418 N.W.2d 702 (Mich. App. 1987): A zoning ordinance must advance a reasonable governmental interest and may not be purely arbitrary or capricious, or result in an unfounded exclusion of other types of legitimate land use. A zoning ordinance is presumed to be valid and the person

attacking it has the burden of proving that it is an arbitrary, unreasonable restriction upon his use of his own property.

- *Petz v. Parish of St. Tammany*, 628 F. Supp. 159 (1986): A local zoning ordinance is a valid exercise of police power unless clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, or general welfare. Proper state purposes under the police power may encompass the goals not only of abating undesirable conditions, i.e. nuisances, but also of fostering the ends which a community deems worthy. It is also clear that the police power covers aesthetic as well as safety and health concerns. Accordingly, the courts are to give extreme deference to legislative determinations of community needs and solutions, and a plaintiff is to bear a heavy burden to show that this ordinance is invalid. Additionally, where the legislative determination is fairly debatable, the legislative judgment should be allowed to control.

C. Interpreting Zoning Regulations.

- *McCarthy v. Zoning Board of Appeals*, 199 Conn. Super. Lexis 3017 (1999): The principles governing interpretation of zoning regulations are well settled. Promulgation of zoning regulations is a legislative process, although local in scope. When interpreting a local legislative enactment, the courts look for the express intent of the legislative body in the language it used to manifest that intent. If it is clear and

unambiguous on its face, we will look no further. Zoning regulations, as they are in derogation of common law property rights, cannot be construed to include or exclude by implication what is not clearly within their express terms. The words used in zoning ordinances are to be interpreted according to their usual and natural meaning and the regulation should not be extended, by implication, beyond their express terms.

- *City of Rutland v. Keiffer*, 124 Vt. 357, 205 A.2d 400 (1964): Zoning ordinances are to be strictly construed for the reason that they are in derogation of common law property rights. The zoning measure will be construed to give the words used their ordinary meaning and significance, and where no definition of a word is given in an ordinance, it must be given its commonly accepted use.

III. CASES ESTABLISHING THE POLICE POWER OF A MUNICIPALITY TO PROMOTE THE HEALTH, SAFETY AND WELFARE OF THE PUBLIC

The root of the government's authority to impose zoning lies in its generally recognized police powers. Those police powers relate to the government's authority to impose laws that protect and promote the public health, safety, and general welfare of the community.

Although a high percentage of the court cases that involve parking restrictions on motorhomes derive from zoning ordinances, there are cases where the parking restriction is simply an ordinance that has been adopted by the

municipality. In those cases, it is important to review the municipality's general authority to enact such an ordinance. Is the ordinance the municipality adopted consistent with the state's grant of authority to that municipality or has the ordinance exceeded that grant of power?

A. <u>Authority to Impose Zoning as Part of Police Powers</u>.

- *City of Rutland v. Keiffer*, 124 Vt. 357 (1964): The law is well settled that municipal zoning ordinances are constitutional in principle as a valid exercise of the police power which reasonably relates to public health, safety, or general welfare.
- *Colorado Manufactured Housing Association v. City of Salida*, 977 F. Supp. 1080 (1997): The enactment of zoning ordinances is a legitimate police power of local governments. To prevail on a substantive due process claim, plaintiffs must establish the challenged ordinance as clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, or general welfare.
- *Whaley v. Dorchester County Zoning Bd.*, 524 S.E.2d 404 (S.C. 1999): Prohibiting the long-term parking of commercial vehicles in residential neighborhoods is reasonably related to protecting property values and maintaining the aesthetic appearance of residential areas. Prohibiting commercial vehicles from parking in the streets in residential zones reduces traffic congestion. Ordinance 96-09 bears a substantial relationship to the promotion of public health, safety, convenience,

prosperity, and the general welfare of persons who reside in single-family residential areas of Dorchester County.

B. Authority to Restrict Property Rights through Non-Zoning Ordinances.

- *Town of Windham v. LaPointe*, 308 A.2d 286 (Me. 1973): There is a presumption in favor of the validity of an ordinance passed in pursuance of statutory authority, and every presumption is to be made in favor of the constitutionality of such an ordinance, but such presumption is not absolute. The burden rests upon the party attacking the constitutionality of an ordinance and the standard of proof by clear and irrefutable evidence that it infringes the paramount law. The town claims the power to regulate house trailers through a police power ordinance, as distinguished from a zoning ordinance, from a general grant contained in the state law and from the specific authority to regulate the sanitation and parking facilities of trailers. A town has no right to appropriate or interfere with private property, except so far as that right has been conferred by statute, either expressly or by necessary implication. Private property rights are not absolute, however, but are subject to the implied condition that the property shall not be used for any purpose that injures or impairs the public health, safety, order or welfare. If the use causes an actual or substantial injury or impairment of the public interest in any of its aspects above enumerated, a regulating or restraining statute, or an

ordinance implementing such a statute and enacted pursuant to statutory authority, if itself is not merely arbitrary, and not violative of any constitutional limitations, is valid.

IV. SUBSTANTIVE DUE PROCESS CHALLENGES TO ZONING ORDINANCES

Typically, when a zoning ordinance is challenged, a substantive due process claim can be raised. In the context of a zoning ordinance, the substantive due process claim is that the municipality is taking away property rights without the due process of law. The Fourteenth Amendment protects citizens from the taking of their property and rights by the government without due process of law, i.e. substantive due process. .

Courts will employ a two-part test with substantive due process challenges. First, it will examine whether the ordinance seeks to promote a legitimate state objective, e.g., the protection of public health, safety and welfare. The second element of the test is to examine whether the ordinance bears a reasonable relationship to the stated objective.

(With zoning ordinances, there is another issue that courts also need to examine - - whether the restriction placed on the property constitutes a taking of the property for which the government must compensate the property owner. We look at that issue separately in section VII below. We have included in Appendage B the minutes of the Redmond, Washington, Planning Commission dated September 18, 2002, as well as portions of the minutes of the Redmond City Council meeting of January 7, 2003 in Appendage C, as they pertain to the

due processes followed in the enactment of their ordinance #2149 to illustrate the acceptable following of "due process.")

The following court cases also establish the two-part substantive due process test:

- *Recreational Vehicles v. Sterling Heights*, 418 N.W.2d 702 (Mich. App. 1987): The test to determine whether legislation meets a due process challenge is whether that legislation bears a reasonable relationship to a permissible legislative objective. A zoning ordinance must advance a reasonable governmental interest and may not be purely arbitrary or capricious, or result in an unfounded exclusion of other types of legitimate land use. A zoning ordinance is presumed to be valid and the person attacking it has the burden of proving that it is an arbitrary, unreasonable restriction upon his use of his own property.
- *City of Brookside Village v. Comeau*, 633 S.W.2d 790 (Tex. 1982): We are directed to consider all circumstances and determine, as a substantive matter, if reasonable minds may differ as to whether a particular zoning regulation has a substantial relationship to the protection of general health, safety, or welfare of the public. If the evidence before this court reveals an issuable fact in this respect, the restriction must stand as valid. We hold that such regulation of mobile homes represents a valid exercise of a municipality's police power. The ordinances here in question bear a substantial relationship to the public health, safety, , or general welfare. They are not clearly

arbitrary or unreasonable, and hence are not unconstitutional. (While this case involved regulation of mobile homes, its reasoning would also apply to regulation of motorhomes).

- *Cannon v. Coweta County,* 389 S.E.2d (Ga. 1990): The argument that Cannon is making is that the ordinance, on its face, exceeds the police powers of the county, thus violating substantive due process. Such a challenge is governed by the following rules: An ordinance is a valid exercise of the county's police power if it is substantively related to the public health, safety, or general welfare. Stated another way, an ordinance satisfies this substantive due process test if the ordinance serves some public purpose and if the means adopted by the ordinance are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon the person regulated. The zoning ordinances are presumed valid, and the landowner has the burden of coming forward with clear and convincing evidence that the ordinance is invalid. If the landowner meets this initial burden, then the governing body must come forward with evidence in justification of the zoning.
- *City of Colby v. Hurtt*, 212 Kan. 113, 509 P. 2d 1142 (1973): A careful study of the records convinces this court that the appellant has failed to produce any evidence which tends to show the ordinance was not enacted to promote the health and general welfare of the citizens of the

city, conserve the value of property and encourage the most appropriate use of land.

V. CASES INVOLVING BANS ON THE PARKING OF MOTORHOMES ON PRIVATE RESIDENTIAL PROPERTY

Most zoning ordinances prohibiting the parking of motorhomes on private property are upheld by courts as valid restrictions designed to promote legitimate governmental interests. Although there is an issue as to whether aesthetics by itself is a sufficient governmental interest that would justify zoning ordinances (see next section), most municipalities are able to bring forth other reasons that justify the parking ban. The cases below are illustrative:

- *Wundsan v. Gilna*, 422 N.E.2d 1109 (Ill. App. 1981): The ordinance in question prohibited the storage of motorhomes in front yard driveways. The city sufficiently showed a legitimate connection between the objectives of the ordinance and its relationship to the prevention of overcrowding of land, the maintenance of adequate light, air and sunshine, the promotion of safety from fire and other dangers and the improvement and beautification of the city which harmonizes with the natural characteristics of the neighborhood, and are all well supported by law.
- *Whaley v. Dorchester County Zoning Bd.*, 524 S.E. 2d 404 (S.C. 1999): Prohibiting the long-term parking of commercial vehicles in residential neighborhoods is reasonably related to protecting property values and maintaining the aesthetic appearance of residential areas. Prohibiting

commercial vehicles from parking in streets and residential zones reduces traffic congestion. Ordinance 96-09 bears a substantial relationship to the promotion of public health, safety, convenience, prosperity and the general welfare of persons who reside in single family residential areas of Dorchester County.

- *Recreational Vehicles v. Sterling Heights*, 418 N.E.2d 702 (Mich. App. 1987): The challenged ordinance regulated the parking and storage of recreational vehicles, enclosed campers, boats, snowmobiles and utility trailers upon public and private property in a single family residential area. The court accepted the city's claim that the ordinance promoted the public safety and health by reducing traffic hazards, maintaining helpful standards of sanitation, maintaining unobstructed access to public sideways, thoroughfares and rights-of-way, and preserving the residential character of residential neighborhoods.

VI. CASES DISCUSSING WHETHER AESTHETICS, BY ITSELF, IS A SUFFICIENT JUSTIFICATION FOR ZONING ORDINANCES RESTRICTING USE OF PRIVATE PROPERTY

As the cases below show, there is a split among courts as to whether zoning ordinances that restrict the use of private property may be justified solely on aesthetic purposes only. Usually, a ban on motorhome parking on private property will be justified in whole or in part on aesthetic purposes. Motorhome owners facing such a claim should closely examine state laws and court cases to

determine whether aesthetics is a legitimate justification in their state for a zoning ordinance that restricts the use of private property.

Even in cases where aesthetics is deemed an acceptable justification for restricting the use of private property, individuals may still claim that the aesthetic standard is too arbitrary or vague to provide sufficient guidance to property owners. Closely examine the ordinance to determine if there is too much discretion given to governmental decision makers and if the ordinance is definite enough to adequately advise property owners what is and what is not permitted. Also individuals should examine whether there is an overall zoning plan that promotes aesthetics or whether the ordinance is an isolated attack on recreational vehicles and not tied into an overall promotion of aesthetics.

A. Jurisdictional Split on Aesthetics

- *Recreational Vehicles v. Sterling Heights*, 418 N.W.2d 702 (Mich. App. 1987): Plaintiffs finally allege that aesthetics may not be the sole reason for drafting an ordinance. While aesthetics is a reasonable governmental interest, we agree with plaintiffs that by itself, it is insufficient to support an ordinance that restricts the parking and storage of recreational vehicles on private property.
- *The People v. Tolman*, 110 Cal. App. 3d 6 (1980): It appears to us that the ordinance bears an adequate relation to the general welfare by being considered as a regulation of the aesthetic appearance of residential neighborhoods. Although aesthetic considerations were formally suspect as a basis for such an ordinance, the state now

sanctions such a consideration. We further hold that even if, as plaintiffs maintain, the principal purpose of the ordinance is not to promote traffic safety but to improve the appearance of the community, such a purpose falls within the city's authority under the police power.

- *Georgia Manufactured Housing Association v. Spalding County*, 148 F.3d 1304 (11th Cir. 1998): The first prong of this test (substantive due diligence) is satisfied because the county could have been pursuing the goal of "aesthetic compatibility", seeking to reduce friction between the appearance of site-built homes and manufactured homes by requiring manufactured homes to conform with the standard characteristics of site-built homes, such as roof pitch and foundation. The goal of aesthetic compatibility is a legitimate government purpose.

B. Arbitrariness in the Application of Aesthetic Justification.

- *Lake St. Louis Community Association v. Leidy*, 672 S.W.2d 381 (Mo. App. 1984): Carried to its logical conclusion, plaintiffs argument would prohibit the parking of any vehicle larger than a conventional automobile which offended the aesthetic sensibilities of the managers or directors of the Association. Such unfettered discretionary power is entirely too broad. Prospective purchasers of property in the community as well as property owners planning to purchase vehicles are entitled to know what they will and what they will not be permitted to park on their lots. Nothing in the language of the

restrictive covenant is calculated to put the reader upon notice that it might be applied to a vehicle classified by the State of Missouri as a "recreational vehicle."

- *Petz v. Parish of St. Tammany*, 628 F. Supp. 159 (1986): The Parish concedes that other than the title covenants, there are no Parish regulations of community aesthetics. In addition, other than flood control ordinances, the Parish has no building code. Indeed, the Parish concedes that a land owner could build a tar paper shack if he wanted to so long as the structure was site-built. When viewed against the backdrop of this general lack of regulations, the rationale for the Parish's prohibition of the erection of mobile homes in an A-2 residential zone is substantially undercut. Even recognizing that the power to classify in the adoption of police laws admits the exercise of a wide scope of discretion, the failure of the Parish officials to engage in any other regulative activity aimed at promoting aesthetic values makes it difficult to accept the argument that the exclusion of the type of home here in question is other than arbitrary. (While this case involved regulation of mobile homes, its reasoning would also apply to regulation of motorhomes).

VII. CASES DISCUSSING WHETHER RESTRICTIONS ON PRIVATE PROPERTY CONSTITUTE A COMPENSABLE TAKING OF THE PROPERTY BY THE GOVERNMENT

As stated earlier, even if the government has the right to restrict property use, the restriction may require the government to compensate the property owner. In other words, if the restrictions imposed upon the property amount to a taking of the property, the government must compensate the property owner for the taking.

Below we discuss under what circumstances the imposition of zoning restrictions may be considered a taking of private property. As will be seen, it is very difficult to persuade a court that motorhome parking restrictions ever amount to a taking of property that would require compensation by the government.

A. Reasonable Alternative Uses.

Although the zoning ordinance may take away the highest and best use of the property, the government will not be required to compensate the property owner if there is a reasonable alternative use that applies to the property.

- *Board of County Commrs. v. Mt. Air Ranch*, 192 Colo. 364, 563 P.2d. 341 (1977): While acknowledging that zoning regulations which preclude the use of property for any reasonable purpose whatsoever are invalid, the courts say that it is clearly not necessary that the land be available for its "highest and best" use. It is only necessary that a reasonable use be available. In this case, the resort facility failed to

show that the removal of the trailers would make the area unusable for any reasonable purpose whatsoever.

- *Recreational Vehicle v. Sterling Heights*, 418 N.W.2d 702 (Mich. App. 1987): The ordinance in question prohibited the parking of recreational vehicles, enclosed campers, boats, snowmobiles and utility trailers upon public and private property in a single family residential area. Plaintiff claimed that by enacting the law, Sterling Heights confiscated their land and, therefore, had to pay them just compensation. The court held that the ordinance does not amount to taking because it permits reasonable alternative uses for plaintiff's property.
- *Varhola v. City of Akron*, 1999 Ohio App. Lexis 3263: The appellants have argued that the denial of a conditional use permit to retain a storage trailer on their property constitutes an unconstitutional deprivation of the use of their land. Specifically, they have argued that the use of the trailer for storage and materials related to their part time construction business is an economically viable use of the land. The prohibition of one economically viable use of property, however, does not rise to the level of an unconstitutional deprivation. In order to constitute an unconstitutional deprivation, denial of a conditional use must leave the property owner with only permitted uses that are not economically feasible, are highly improbable, or are particularly impossible under the circumstances. The property owner must

demonstrate that there is no remaining economically viable use of the land. The appellants have failed to meet this burden.

B. Accessory Use.

In cases where municipalities have enacted zoning ordinances which prohibit motorhome or other vehicle parking on private property, property owners who park their vehicles prior to the zoning ordinance often claim that they are a pre-existing non-conforming use that must be "grandfathered" under the zoning ordinance. Typically, courts will recognize non-conforming uses as an exception to the zoning ordinance, but only if the use is a primary or accessory use of the property. As seen by the cases below, courts generally do not consider the parking of a motorhome or other vehicle as an accessory use of property.

- *Wundsan v. Gilna*, 422 N.E.2d 1109 (Ill. App. 1981): Another issue raised relates to an asserted constitutionally protected right to continue defendant's non-conforming practice of storing his vehicle on his front yard driveway irrespective of the ordinance. The argument is based upon the fact that defendant parked his motorhome in his driveway for several years before the ordinance was passed and before its effective date. Since parking his motorized home in the front yard driveway was legal before the ordinance was passed and before it became effective, he claims that it became a legal non-conforming use thereafter. The storage of a motorized home on residential zoned property is neither incidental nor primary in relation to the residence constructed on that property.

- *Whaley v. Dorchester County Zoning Bd.*, 524 S.E.2d 404 (S.C. 1999): Accessory uses are those which are customarily incident to the principal use. In order to qualify as a use incidental to the principal use of a non-conforming premises, such use must be clearly incidental to, and customarily found in connection with, the principal use to which it is allegedly related. An accessory use must be one so necessary or commonly to be expected that it cannot be supposed that the ordinance was intended to prevent it. The court held that parking a commercial vehicle in the street or driveway is not an accessory use to a residence.
- *The People v. Tolman*, 110 Cal. App. 3d 6 (1980): The city can terminate non-conforming uses with just compensation. The compensation must be commensurate with the investment involved. In our case there is, in reality, no compensation involved as enforcement of the ordinance does not deprive defendant of her investment in either her house or her truck. It just means that she will have to park her truck elsewhere.

VIII. ENFORCEMENT OF ZONING CODE VIOLATIONS IS A CIVIL MATTER

Typically, if a zoning code is violated, the government agency in charge with the enforcement of the zoning code will cite the property owner. The property owner is usually given an administrative hearing in which to contest the

charges. If they still continue to contest the charges after the administrative agency has found a violation, the administrative agency will file an action in the local court system.

Courts generally treat zoning enforcement actions as civil matters. One court has referred to the enforcement action as a "quasi-criminal action." *Wundsan v. Gillna*, 422 N.E.2d 1109 (Ill. App. 1981). If the court upheld the finding of a zoning violation, penalties involve monetary fines. In addition, courts are authorized to enjoin the violation through the issuance of an injunction. If the violation continues, the property owner can then be brought up on contempt charges for violating the injunction.

It is clear that courts are limited in the fines they can levy by the zoning code. In *Ritz v. Area Planning Commission*, 698 N.E.2d 386 (Ind. App. 1998), the court imposed a $147,000.00 fine against property owners that failed to remove abandoned automobiles from their property. The appeals court reversed finding that the maximum fine allowed by the zoning code was $2,500.00.

IX. RESTRICTIONS IMPOSED BY DEVELOPERS AND COMMUNITY ASSOCIATIONS

Subdivision developers and community associations may adopt restrictive covenants or regulations which prohibit the parking or storage of motorhomes on private property of occupants of the subdivision. For the most part, such restrictions will be upheld by courts, provided they are adopted in accordance with the rules governing the community association and are not vague nor arbitrary.

If a property owner is confronted with a restrictive covenant or community association regulation restricting motorhome parking or storage on private property, the property owner should closely examine when the restriction was adopted, if the owner had notice of the restriction, and whether the restriction was adopted in accordance with the procedures governing the subdivision.

A. Authority to Adopt Restrictions.

- *Shafer v. Sandy Hook Yacht Club Estates*, 883 P.2d 1387 (Wash. App. 1994): Sandy Hook is a non-profit corporation consisting of all property owners within the Sandy Hook Plat. All of the property purchased within the plat was subject to the original covenants which included the bylaws of the community association and all restrictions contained therein. When the residents of Sandy Hook amended the bylaws and adopted a restriction against the storage of vehicles, several owners sued the association. The court upheld the restriction finding the following: (1) it is undisputed that the property owners had notice of the reservation of power to amend the bylaws and impose restrictions, (2) it is undisputed that Sandy Hook followed the established procedure for amending the bylaws by adopting such restrictions, and (3) it has not been alleged that the reservation of power or the particular restrictions at issue are void as against public policy. Therefore, all Sandy Hook property owners are bound by the new restrictions respecting the use of privately owned property.

- *Arizona Biltmore Estates Association v. Tezak*, 177 Ariz. 447, 868 P.2d 1030 (1993): The deed restrictions in this case constitute a covenant running with the land and form a contract between the subdivision's property owners as a whole and the individual lot owners.

B. Interpretation of Restriction.

As with zoning ordinance cases, there is often a dispute as to whether the wording of the restrictive covenant actually covers the motorhome or recreational vehicle owned by the resident. This requires the court to interpret the restrictive covenant. In these cases, some courts will narrowly construe the wording of the covenant and enforce it only if it clearly lists the motorhome or recreational vehicle in its prohibition. Other courts will take a more expansive view looking toward the "intent" of the regulation.

If motorhome owners face parking or storage restrictions from community associations, the owners or their lawyers will certainly need to closely examine the wording of the restriction to determine if an argument can be made that the restriction is not intended to cover motorhomes or recreational vehicles.

- *Fairwood Greens Homeowners Association v. Young*, 26 Wn. App. 758, 614 P.2d 219 (1980): In interpreting restrictive covenants, the primary objective is to determine the intent of the parties, and clear and unambiguous language will be given its manifest meaning. Intent is a question of fact to be discovered by reference to the instrument in its entirety and the manifest meaning of the language used by the parties. Restrictions being in derogation of the common law right to use land

for all lawful purposes will not be extended by implication to include any use not clearly expressed nor will they be aided or extended by judicial construction. Although a restrictive covenant is to be strictly construed, it must be considered in its entirety, and surrounding circumstances are to be taken into consideration when the meaning is doubtful. All doubts as to the intention of the owner or maker should be resolved against them. Public policy favors the free use of land, and doubts will be resolved in favor of the unrestrictive use of property. However, the strict rule of construction should not be applied in such a way as to defeat the plain and obvious purpose of the restriction.

- *Arizona Biltmore Estates Association v. Tezak*, 177 Ariz. 447, 868 P.2d 1030 (1993): While it is true that courts should not give a covenant a broader than intended application, it is well settled that a covenant should not be read in such a way to defeat the plain and obvious meaning of the restriction. We note that the recital to the Declaration of Covenants, Conditions and Restrictions for the Arizona Biltmore Estates provides that the covenants, conditions and restrictions were established "for the purpose of enhancing and protecting the value, desirability and attractiveness of the Covered Property and enhancing the quality of life within the Village." The provision which restricts the parking of a "trailer, camper, boat or similar equipment" is in addition to eleven other provisions restricting other uses of the

property which would be unsightly or annoying. While we consider the language used in the provision restricting the parking of various conveyances including vehicles in conjunction with these other portions of the covenants, conditions and restrictions, it becomes obvious to us that the parties intended to restrict the display of large, bulky, non-standard vehicles. While the wording of the provision might make it difficult to determine in some instances whether a particular vehicle is to be included, there can be no doubt that this very large bus belonging to the Tezaks falls within the types of vehicles the drafters intended to restrict.

- *Borowski v. Welch*, 117 Mich. App. 712, 324 N.W.2d 144 (1982): In placing the proper construction on restrictions, if there can be said to be any doubt about their exact meaning, the courts must have in mind the subdivider's intention and purpose. The restrictions must be construed in light of the general plan under which the restrictive district was platted and developed. In attempting to give effect to restrictive covenants, courts are not so concerned with the grammatical rules or the strict letter of the words used as with arriving at the intention of the restrictor if it can be gathered from the entire language of the instrument. In reviewing the covenant as a whole, construing it with reference to the present and prospective use of the property, and being concerned more with the intent of the

restrictor than the strict letter of the words used, and by taking the language in its generally understood or popular sense without technical refinement and without seeking dictionary definitions, we conclude that the covenant prohibits the parking of motorhomes such as defendant's within the subdivision. The evident purpose of the restriction was to prohibit a general class of large vehicles, whether automobile-drawn or self-propelled. The drafters apparently believed that such items are eyesores and destroy the aesthetics of the neighborhood. The mere fact that the restrictive covenant failed to mention motorhomes which, it is important to note, were not in existence when the restriction was written, should not preclude a finding that the drafters intended to prohibit such vehicles.

C. Vague and Arbitrary Restrictions.

Another argument that can be used by property owners confronted by a restrictive covenant prohibiting the parking or storage of motorhomes is that the covenant is too vague or arbitrary:

- *Lake St. Louis Community Association v. Leidy*, 672 S.W.2d 381 (Mo. App. 1984): Carried to its logical conclusion, plaintiff's argument would prohibit the parking of any vehicle larger than a conventional automobile which offended the aesthetic sensibilities of the managers or directors of the Association. Such unfettered discretionary power is entirely too broad. Prospective purchasers of property in the community as well as property owners planning to purchase vehicles

are entitled to know what they will and what they will not be permitted to park on their lots. Nothing in the language of the restrictive covenant is calculated to put the reader upon notice that it might be applied to a vehicle classified by the State of Missouri as a "recreational vehicle."

D. Notice of the Restrictive Covenant

Another issue that arises in restrictive covenant cases is the timing of when the restrictive covenant came into an existence. If the property owner opposing a restrictive covenant can show that their lot purchase preceded the restriction, they may be able to escape the applicability of the restriction to their property.

- *Greenlawn Village Condominium Unit Owners Association v. East*, 1989 Oh. App. LEXIS 4180 (1989): We conclude that a representation was made to the Easts by Greenlawn, through its attorney, that Greenlawn had no present intention of preventing the Easts from parking their van on the driveway in front of the garage when, in fact, Greenlawn did presently intend to prohibit such parking. This was a misrepresentation of fact. Based on the clear and undisputed evidence in this case, we conclude that it would be inequitable to enforce the regulation prohibiting the Easts from parking their van on the driveway in front of their garage in view of the assurance given by Greenlawn's attorney at the time of the closing of the Easts' purchase of their unit in Greenlawn, that such parking was permitted.

- *Fairwood Greens Homeowners Association v. Young*, 26 Wn. App. 758, 614 P.2d 219 (1980): When the Youngs purchased the residential lot in 1968, Article 9, Section 4 of the Covenants, restricted the placing of any vehicle in excess of 6,000 pounds gross "outside **of** any residential lot or on any street" instead of "outside **on** any residential lot or on any street." According to the plain and unambiguous language of the covenant in effect when the Youngs purchased the property, there was no restriction as to the placing of a motorhome on a residential lot. And, since the Youngs were not a party to the Toland case which revised the wording of the restriction, they are not bound by that judicial amendment to the restriction. To hold that the Youngs are bound by the purported reformation of Article 9, Section 4 ordered by the court in the Toland case would require us to ignore the Youngs' right to due process of law.

E. Due Process Illustrations

Appendages B and C are included herein as an illustration of *due process* as used legitimately in creating effective legislation by a governing body. Note how the public was permitted "a voice" in the proceedings.

X. CONCLUSION

It is apparent that we who have a lifestyle involving motorhomes and recreational vehicles must be on the alert. Your FMCA National Office will do all in its power to minimize our difficulties; therefore, we will need the help of all

members and officers of local chapters to advise us of any problem they have with full information so that we can better pursue aid in this area.

The Governmental and Legislative Affairs Committee has a number of local volunteers throughout the country who also might be of assistance. We solicit your dialogue, ideas and individual concerns.

The laws pertaining to motorhome parking on your property also can change if the land is annexed by a different town or city. Annexation is increasingly causing problems, as more and more cities try to increase their tax base by swallowing up rural areas. If your area is being annexed, be sure to get everything you want grandfathered (parking rights, etc.) *in writing*. Otherwise, rest assured that all bets are off.

If you would like to learn more, please attend the Governmental and Legislative Affairs seminar at FMCA international conventions.

Family Motor Coach Association

Attn: Member Services Department

8291 Clough Pike

Cincinnati, OH 45244

800-543-3622

membership@fmca.com

APPENDAGE A

SAMPLE ORDINANCES THAT MAY BE USED FOR PRESENTATIONS TO LOCAL UNITS OF GOVERNMENT

THE REDMOND WASHINGTON ORDINANCE NO. 2149

AN ORDINANCE OF THE CITY OF REDMOND, WASHINGTON, AMENDING THE REDMOND COMMUNITY DEVELOPMENT GUIDE IN ORDER TO ADOPT REGULATIONS RELATED TO THE PARKING OF RECREATIONAL AND UTILITY VEHICLES IN RESIDENTIAL AREAS (DGA 02-008), AND TO PROVIDE FOR A TWO-YEAR AMORTIZATION PERIOD; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, it has come to the attention of the Redmond City Council that there is a need to review existing regulations concerning the parking of recreational and utility vehicles in residential areas; and

WHEREAS, the protection of neighborhood character and preservation of community design represent strong values of the City as articulated by the policies of the Redmond Comprehensive Plan; and

WHEREAS, the City of Redmond desires to adopt regulations intended both to clarify and augment existing regulations regarding the appropriate placement and treatment of recreational and utility vehicles in residential areas; and

WHEREAS, the Planning Commission has conducted a public hearing to receive public comments on the proposed regulations; and

WHEREAS, a State Environmental Policy Act Checklist was prepared and a Determination of Non-Significance was issued on July 31, 2002 for the proposed regulations; and

WHEREAS, the City Council of the City of Redmond acknowledges that the proposed regulations are for the benefit of the public health, safety, and welfare, NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF REDMOND, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Findings and Conclusions. After carefully reviewing the record and considering the evidence and arguments in the record and at public meetings, the City Council hereby adopts the findings, analysis and conclusions in the *Planning Commission Report DGA 02-008, Amendments to*

the Parking and Storage of Recreational/Utility Vehicles in Residential Areas (November 6, 2002).

Section 2. New Regulations Related to The Parking and Storage of Recreational, Utility and Commercial Vehicles in Residential Neighborhoods. Redmond Community Development Guide Section 20D.130.10-050 *Parking and Storage of Recreational, Utility and Commercial Vehicles in Residential Neighborhoods,* is hereby amended to read as set forth in Exhibit 1, attached hereto and incorporated herein by this reference as if set forth in full.

Section 3. Other Changes to RCDG for Editing and Clarification Purposes. Sections 20C.30.75, *Outdoor Storage in Residential Zones* and 20D.120 *Outdoor Storage and Service Areas* of the Redmond Community Development Guide are hereby amended to read as shown in Exhibit 1, attached hereto and incorporated herein by this reference as if set forth in full.

Section 4. Amoritization Period. Any recreational or utility vehicle, as defined in Redmond Community Development Guide Section 20A.20.180, *Recreational and Utility Vehicles,* which was legally parked on a residential property during the week in which the effective date of this ordinance falls or through photo documentation or other evidence can prove prior establishment, may continue to be parked in the same manner for two years from the effective date of this ordinance provided that the recreational or utility vehicle is in compliance with all regulations in effect when the parking of the vehicle was legally established.

Section 5. Severability. If any regulation, section, sentence, clause, or phrase of this ordinance, or any regulation adopted or amended hereby, should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of any other regulation, section, sentence, clause, or phrase of this ordinance or any regulation adopted or amended hereby.

Section 6. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five days after passage and publication of an approved summary thereof consisting of the title.

CITY OF REDMOND

ROSEMARIE IVES, MAYOR

ATTEST/AUTHENTICATED:

BONNIE MATSON, CITY CLERK

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

FILED WITH THE CITY CLERK: December 31, 2002
PASSED BY THE CITY COUNCIL: January 7, 2003
SIGNED BY THE MAYOR: January 8, 2003
PUBLISHED: January 11, 2003
EFFECTIVE DATE: January 16, 2003
ORDINANCE NO.: 2149

Ordinance No. 2149 Exhibit 1

20D.130.10-050 Parking and Storage of Recreational, Utility and Commercial Vehicles in Residential Neighborhoods.

(1) Purpose. The intent of this section is to define permitted locations for the parking of Recreational, Utility and Commercial Vehicles within residential areas of the City such that neighborhood quality and character are maintained.

(2) Exemptions. Pickup or light trucks, 10,000 pounds gross weight or less, with or without a mounted camper unit, which are primarily used by the property owner for transportation purposes are exempt from this section.

(3) Recreational and Utility Vehicles. Requirements:

a. General Requirements. Vehicles may be parked in any area which is either residentially zoned or used for residential purposes, including City Center, provided the following conditions are met:

i. Vehicles shall not intrude into a right-of-way or access easement or obstruct sight visibility from adjacent driveways, rights-of-way or access easements.

ii. Recreational vehicles shall be operable and maintained in a clean, well-kept state that does not detract from the appearance of the surrounding area.

iii. Recreational vehicles equipped with liquefied petroleum gas containers shall meet the standards of the Interstate Commerce Commission. Valves or gas containers shall be

closed when the vehicle is stored and, in the event of leakage, immediate corrective action must be taken.

iv. Vehicles shall not be parked in a waterfront building setback, on slopes greater than 15 percent, in designated open spaces or recreational areas, in sensitive areas, in sensitive area buffers, or in floodways.

v. Recreational vehicles may be occupied on a temporary basis not to exceed 30 days within one calendar year.

vi. Unless the Uniform Building Code or Uniform Fire Code dictate otherwise, there shall be no minimum building separation for Recreational and Utility Vehicles.

vii. Screening Requirements:

1. Vehicles parked on the side or rear of a residential property must be sight screened from the closest abutting street right-of-way when the vehicle is not parked perpendicular to the right-of-way.

2. Type I landscaping or an equivalent method as determined by the Code Administrator that meets the intent of this section shall be used.

3. Other screening may be required at the discretion of the Code Administrator.

b. Permitted Parking Locations.

A vehicle may be located in the following areas listed in order of priority, provided the general requirements of 20D.130.10-050(3)(a) are met:

i. Within a vented garage or carport.

ii. In a side or rear yard.

iii. Within a front yard on a driveway only, parked perpendicular to the right-of-way. See Appendix 20D-3 Construction Specifications and Design Standards for Streets and Access.

iv. In other locations if determined by the Code Administrator to be less obtrusive than the above locations. Screening the recreational vehicle with landscaping, fencing or a combination of the two may be required to meet this standard.

v. If none of the above locations are feasible, the recreational/utility vehicle must be stored off-site.

c. Effective Date. Notwithstanding any other provision of this section, for a maximum two-year period from the effective date of the first ordinance codified in this sub-section, a recreational or utility vehicle which was owned and was being parked on a property by the occupant of the property on the effective date of this ordinance may continue to be parked provided that all such vehicles must be in compliance with all relevant requirements in effect prior to the adoption of the revisions.

(4) Truck Tractors and Trailers, Large Commercial Vehicles. Parking of commercial vehicles over 10,000 lbs. gross weight is prohibited in residential areas. (Formerly 20C.20.150(25))

20C.30.75 Outdoor Storage in Residential Zones.

20C.30.75-010 Purpose.

The purpose of the residential outdoor storage regulations is to ensure that adequate opportunity is allowed for the outdoor storage of vehicles and materials in residential zones while not impacting the character and uses intended for residential zones in Redmond. (Ord.1901)

20C.30.75-020 Requirements.

(1) Limitations. Outdoor storage is prohibited in all residential zones except when the items stored are customarily associated with an accessory to the use of the dwelling and comply with the requirements of RCDG 20C.30.75.

(2) Allowed Outdoor Storage. Items customarily associated with the residential use of a dwelling may be stored outside provided the following conditions are met:

a. Outdoor storage may only take place outside of the front yard setbacks, side yard setbacks, waterfront building setbacks,

slopes greater than 15 percent, designated open spaces or recreational areas, sensitive areas, sensitive area buffers, and floodways.

b. Except for vehicles allowed under RCDG 20C.30.60-030 or subsection (3) or (4), outdoor storage shall not be visible from a public or private street. Fences or screening may be used to ensure that an outdoor storage area is not visible from the street.

c. Outdoor storage areas shall not prevent emergency access to the residence or any outbuilding.

d. Outdoor storage shall not cover more than 200 square feet of land area.

e. Materials stored outdoors shall not attract pests or vermin and shall not be dangerous.

f. Except for motor vehicles allowed under RCDG 20C.30.60-030 or subsection (3) or (4), materials stored outdoors shall not be owned by or used in any business or industry including a home business.

g. Except for vehicles allowed under RCDG 20C.30.60-030 or subsection (3) or (4), materials stored outdoors shall not exceed a height of six feet nor shall they be stacked or stored higher than six feet.

(3) Recreational and Utility Vehicles. See RCDG 20D.130.10-050, Parking and Storage of Recreational/Utility and Commercial Vehicles in Residential Neighborhoods.

(4) Commercial Vehicles.

a. Allowed Commercial Vehicles.

i. Within a residential zone, no more than one commercial vehicle may be parked on a lot(s) occupied by a residence or on a street(s) adjoining the residence. Where a lot includes more than one residence, one commercial vehicle may be parked on the lot(s) or an adjoining street for each residence. Notwithstanding

this provision, where an accessory dwelling and a primary dwelling occupy one or more lots, only one commercial vehicle may be parked on the lot(s) occupied by the residences or on the street(s) adjoining the residences.

ii. Only residents may park a commercial vehicle within a residential zone. The commercial vehicle shall only be parked on the lot(s) occupied by the commercial vehicle user or a street which adjoins the user's residence.

iii. The commercial vehicle shall be operable.

iv. Other than cleaning the commercial vehicle, maintenance and repairs shall not be performed on the commercial vehicle within a residential zone except on the premises of a home business which meets the requirements of RCDG 20C.30.60-030(12).

v. The commercial vehicle shall not be parked or stored on a lawn or in any landscaped area.

b. Prohibited Commercial Vehicles. Except as provided in subsection (4)(c), truck tractors, truck tractor trailers, vehicles over 10,000 pounds gross weight, and commercial vehicles which do not comply with subsection (4) shall not be parked or stored within a residential zone.

c. Vehicles used in a business may be parked in a residential zone when making pickups or deliveries or being used in conjunction with the performance of a service on property within a residential zone. (Ord. 1901)

20D.120.10-020 Storage of Materials and Products.

Unless expressly prohibited, the outdoor storage of any material or product used in production, kept for sale on the premises or awaiting shipment, and any production waste, shall be allowed only when such storage complies with the requirements set forth in the chart entitled "Requirements for Outdoor Storage."

Requirements for Outdoor Storage

Zone	Permitted Storage	Requirements	Area	Screening
City Center	Public Street Furniture Sidewalk Restaurants Seasonal Items Special Public Event Auto and Boat Sales Display	Per 20D.170.20		Per 20D.170.20
RC GDD ODD DD	Bulk Storage of more than 3 days with approval by Technical Committee except Vehicle Storage in CC	Maximum height and width of four feet	As Defined in 20D.120.10-070	May be required by Technical Committee
	Nonbulk Storage	Nonbulk must be stored less than 24 hours		(nonbulk exempt)
GC Convenience Commercial Cluster	Public Street Furniture Sidewalk Restaurants Seasonal Items Special Public Events			
	Bulk Storage of more than 3 days with approval by Technical Committee including Vehicle Storage	Maximum height 10 feet		Required as specified in 20D.120.10-040 and from streets and parks
	Nonbulk Storage	Nonbulk must be stored less than 24 hours		(nonbulk exempt)
A, UR, RA, BP, OV, MP and I	All types	Maximum height 20 feet		Required as in 20D.120.10-040
NC and R	Recreational vehicles as provided in RCDG 20D.130.10-050, Parking and Storage of Recreational Vehicles			Required as specified in 20D.130.10-050

(Ord. 2105; Ord. 1756. Formerly 20C.20.140(10))

§ 14-16-2-6 R-1 RESIDENTIAL ZONE

This zone provides suitable sites for houses and uses incidental thereto in the Established and Central Urban areas.

(A) *Permissive Uses.*

(1) House, one per lot.

(2) Accessory use.

? ? ?

(h) Parking of a noncommercial vehicle incidental to another use permitted in this zone, provided all motor vehicles which are not parked inside a building are operative and are not wholly or partially dismantled, and as provided elsewhere in this section. This section shall not apply to the parking of commercial vehicles parked on a temporary basis for the purpose of providing a commercial service incidental to a residential use such as delivery, repair and utility installation and/or repair. The parking of a vehicle meeting the definition for recreational vehicle, except for size, is not deemed incidental to another use permitted in this zone.

(i) Recreational vehicle, boat or boat-and-boat trailer parking as follows:

1. Inside parking.

2. Outside parking in the side yard or the rear yard, provided no part of the unit extends over the public sidewalk; or

3. Outside parking in the front yard, provided:

a. The unit is parked perpendicular to the front curb.

b. The body of the recreational vehicle or boat is at least 11 feet from the face of the curb; and

c. No part of the unit extends over the public sidewalk.

4. Parking is permitted only if the unit, while parked in the zone, is:

a. Not used for dwelling purposes, except one recreational vehicle may be used for dwelling purposes for a maximum of 14 days in any calendar year on any given lot. Cooking is not permitted in the recreational vehicle at any time. Butane or propane fuel shall not be used.

b. Not permanently connected to sewer lines, water lines, or electricity. The recreational vehicle may be connected to electricity temporarily for charging batteries and other purposes if the receptacle and the connection from the recreational vehicle have been inspected and approved by the city; this connection must meet the Electrical Code of the city and a city electrical permit must be obtained for all such installations. The individual taking out the permit must call for an inspection of the electrical wiring when ready for inspection. Standard inspection fees will be charged, except no inspection shall be made for less than a $3.50 fee.

c. Not used for storage of goods, materials, or equipment other than those items considered to be a part of the unit or essential for its immediate use.

5. Notwithstanding the provisions of divisions 3 and 4 above, a unit may be parked anywhere on the premises during active loading or unloading, and use of electricity or propane fuel is permitted when necessary to prepare a recreational vehicle for use.

6. If the dwelling unit on the lot is under construction, the provisions of division (2)(k)3 of this subsection shall control, rather than the provisions of (2)(i)1 through 4 of this division (A).

7. No recreational vehicle or boat may be parked in a clear sight triangle.

APPENDAGE B

REDMOND PLANNING COMMISSION MINUTES

September 18, 2002

COMMISSIONERS PRESENT: Chairperson Snodgrass, Commissioners Commisisioner Dunn, Tucker, Bernberg, Ku

STAFF PRESENT: Cathy Beam, Rob Odle, Terry Marpert, Sarah Stiteler, Redmond Planning Department

RECORDING SECRETARY: Gerry Lindsay

CALL TO ORDER

The meeting was called to order at 7:00 p.m. by Chair Snodgrass in the Public Safety Building Council Chambers. Chair Snodgrass

APPROVAL OF THE AGENDA

The agenda was approved by consensus.

ITEMS FROM THE AUDIENCE

Ms. Nancy Bainbridge-Rogers spoke on behalf of the Microsoft Corporation regarding the Wildlife Habitat Plan. She provided the Commissioners with copies of the recommended revisions that had been submitted in July. She said Microsoft believes Policy NE-WH-14 is appropriate as written. Policy NE-WH-15, which calls for the monitoring and maintenance for a period of five years of any wildlife habitat areas preserved during land development projects, covers topics that generally should be addressed by regulations rather than a blanket Comprehensive Plan policy. A five-year blanket requirement would fail to account for project variables. If a wildlife habitat area is to be preserved during development and not touched, it is unclear what would need to be maintained and monitored. The policy should not be adopted by the Commission unless it is revised to say simply that wildlife areas should be monitored in accord with adopted regulations. Policy NE-WH-19 also outlines a type of standard that would be more appropriately covered by regulations instead of a blanket Comprehensive Plan policy. The

specificity near the end of NE-WH-23 should be deleted because it does not account for potential variables.

PUBLIC HEARING AND STUDY SESSION

A. Recreation Vehicle Regulations, DGA 02-008

By way of background, Sarah Stiteler explained that about a year ago, several citizens spoke to the City Council regarding concerns over the parking of large recreational vehicles (RVs) either on the street, on lawns or in driveways in residential areas that to one degree or another imposed a visual impairment for the neighborhoods. Remedy was sought through the appropriate code enforcement channels, but it was found that the Redmond Community Development Guide does not clearly delineate the allowed location and conditions for the parking of large RVs in residential areas. The Council directed staff to take a closer look at making changes to the code to address issues related to RVs in residential areas.

Continuing, Ms. Stiteler said the intent of the proposed revisions would be to provide direction to staff, the Council, and current and future residents about the parking of RVs. The revisions also seek to establish a balance between allowing residents to continue parking RVs on their property and minimizing visual impacts to neighbors.

The proposal specifies locations for where RVs would and would not be permitted to park in lower density and higher density areas. The proposal also would require screening, remove inconsistent language, and provide better definitions.

Ms. Stiteler said the concerns of residents are that the current code is not adequate with regard to the parking of RVs. The lack of clarity in the Development Guide makes code administration difficult and is confusing for citizens. For example, one section in the code speaks to the storage of RVs in outdoor areas, and another section speaks to the parking and storage of RVs. The staff proposal would remove one of those sections since the language of each mirrors the other. There is also an inconsistent application of regulations concerning vehicles and RVs. There is exception language which permits RVs to park in front setback areas, not on driveways, whereas other vehicles are not permitted to do the same. The exception language is proposed to be removed as well.

Ms. Stiteler said information used to develop the staff recommendation included a review of the Community Development Guide, both past and

present; the ordinances of other local jurisdictions; information from the Municipal Research and Services Center concerning how jurisdictions from around the state handle the issue; and comments made by citizens. She added that the proposed regulations are consistent with those imposed by other jurisdictions and can be considered a moderate position.

The amendment is intended to clarify the Community Development Guide, minimize inconsistency in regulation, and enhance and support the neighborhoods. The amendment offers few major changes to existing regulations and attempts to avoid creating undue hardships for the owners of RVs.

The staff recommended proposal removes Section 20C.30.75(3), outdoor storage language that pertains to RVs in residential zones; and duplicates the language of 20D.130.10-050(2) regarding the parking and storage of recreational, utility, and commercial vehicles in residential neighborhoods; revises Section 20D.130.10-050 to allow for the parking of RVs within a garage or carport, in a side or rear yard, or within a front yard setback, on a driveway only, in lower density areas, and within a garage or carport or in an area designated by the property owner/manager or residents in higher density areas. The proposal also recommends the screening of RVs from the closest abutting property and/or street right-of-way by Type I, or equivalent sight-obscuring landscaping or solid board fencing.

Ms. Stiteler noted that the existing language of the RCDG as well as the staff proposal recommends that RVs in front setback areas should be parked on driveways only. However, the code does not include a strong definition of driveway. Accordingly the proposal includes a definition of driveway, and limits the width to 20 feet, in any front yard or any side or rear yard that abuts a public right-of-way, private street or access corridor. The proposal allows RVs to be no closer than five feet from any side property line, except in shared driveway situations; and directs that the driveway surface shall be paved or of an all-weather surface such as asphalt or compacted gravel.

In answering a questions asked by Commissioner Ku, Ms. Stiteler said the definition of a setback is the required distance between a property line and the corresponding parallel setback line. She said a required front setback in most single family areas is 15 feet. A setback line is defined as a line beyond which toward a property line no structure may extend or be placed, except as permitted by City regulations.

Ms. Stiteler said the regulations will allow for modifications to the driveways under certain circumstances, such as where a driveway widens from 20 feet at the property line to no greater than 30 feet to accommodate a three-car

garage. The portion of the driveway in excess of 20 feet in width shall be a maximum of 40 feet in length, and the overall impervious surface calculations for the lot shall not be exceeded. Any RV parked on a property on the effective date of the ordinance will be permitted to be parked there for a period of five years, provided that all such vehicles comply with all relevant requirements in effect prior to the adoption of the proposed RV regulations. Parking rights will not be transferable to a subsequent property owner should the RV not be in compliance with the revised regulations.

The Commissioners were asked to focus on what changes, if any, are needed to the current regulations; the rights of RV owners to park RVs on their properties, balanced with the visual impacts such vehicles present; how to address the bulk and size to soften the visual impacts; and whether or not the sunset clause is an appropriate method to allow recreational owners to come into compliance.

Chair Snodgrass declared the public hearing open.

Mr. Lee Laney, 13444 Old Redmond Road, said he does not currently and never has owned a RV. He suggested, however, that the proposed amendment represents a gross infringement on homeowner rights. The proposal in effect changes the conditions of home ownership without putting the matter to a vote of the people. Most side and rear yard setbacks are only five feet, and if a home is located to the limits of the setbacks no RV could be parked there, effectively limiting RV ownership to property owners with the proper setbacks. A five-foot tall fence will not screen an eight-foot tall vehicle. No additional regulations should be implemented.

Mr. Jim Gregor, 16910 NE 52nd Street, provided the Commissioners with copies of pictures all taken within one square block of his home. He said there is no room to park a RV on the back side of his triangular-shaped lot unless a tree is removed. The vehicle is parked on the property and screened, though it is still visible. In one instance in the neighborhood, two property owners joined together to create a parking place for RVs; neither is screened and under the proposal would be illegal. On another property there is a RV parked on a driveway and covered in a manner that would not be legal under the proposal. The photos included a number of situations considered to be more of an eyesore than a parked RV and included a parking strip that is full of weeds and not maintained properly; a parked car that has not been moved in six months; bags of bark in flower pots that have not been moved in five years; City-owned property that is mowed only three times each year; a public bus stop that is not maintained; a public island in a public street that is not maintained; a car parked in a yard since the late 1980's; weeds growing in City streets; a fence that is falling down; a yard that is never mowed; a

utility trailer parked over a pile of gravel that has been in place for three years; and blackberries growing over a fence and across a public sidewalk. He said he opposes most of the proposed regulations. He said RV owners have no assurance of being able to find storage lots within five miles of their homes. Furthermore, storage lots are very expensive alternatives.

Mr. Walt Cochran, 13817 NE 74th Street, questioned whether any RV owners were even consulted while the recommendations were being developed, or whether any members of the Commission, the Council or staff own RVs. He suggested that there should be some indication of how many people in the City own RVs. Most of the proposal deals with aesthetics and not safety or the public welfare. The phone book lists 15 RV storage yards between North Bend and Everett, of which only one of the three called had vacancies. Storage of a RV can cost nearly $100 per month, and most yards do not allow the owners to work on their vehicles while they are at the site. The parking ordinance in Kirkland is nearly never enforced and the Redmond ordinance could end up being the same.

Noting that the RV issue would take longer than first anticipated, Chair Snodgrass removed from the agenda the Wildlife Habitat Plan issue, with the concurrence of the other Commissioners.

Mr. William Westwater, 9507 167th Avenue NE, said the regulations regarding driveways are too specific. He said that while they may be appropriate for R-5 developments, they may not be appropriate for much larger properties. It would be appropriate to address the creation of parking areas adjacent to driveways that do not lead to a garage or the road. The community wants regulations that permit the widest possible use of their properties, maximizing opportunities to keep RVs parked at home and minimizing the need to park them in storage yards. Neighborhoods that want stricter controls are free to go about creating covenants and restrictions. It is not the City's job to impose such regulations on neighborhoods where they did not previously exist. The current regulations are sufficient to address most problem situations, including the blocking of sight lines and actual nuisances. He said he agreed with the notion of moving all references to commercial vehicles and RVs to one section of the code. He suggested the removal of all references to the storage of RVs, leaving in only references to parking the vehicles. Duplicative sections should be removed. Occasional use of RVs parked at home should be permitted, something the current code does not address. The code should permit the extended on-street parking of guest RVs up to 30 days. Additional clarity should be added concerning restrictions on front setback parking. The existing screening rules are adequate and should be retained.

Mr. Bill Dana, 13822 NE 73rd Place, said next door to his property there is an RV that is 11 feet high and 35 feet long parked sideways in a front yard. It takes up most of the frontage. An attempt was made to resolve the issue by speaking directly with the neighbor but to no avail. Accordingly stricter regulations are being sought. The neighborhood has covenants that would prevent parking the RV as it is, but many of the covenants have gone unheeded and have been declared to no longer be in effect. RV parking does present a safety issue especially where views are blocked for drivers and pedestrians or children playing in yards. There is an aesthetic issue involved as well which plays directly into property values and quality of life. As written, the current regulations would allow some 70 percent of the homes in the neighborhood to have an RV parked in a manner visible from the street. The current regulations make a distinction between powered and non-powered RVs, and that should be corrected. The proposed sunset clause is not acceptable, especially where safety issues exist.

Ms. Carol Holloway, 17111 NE 96th Place, voiced her support for the proposed regulations and urged the Commission to consider evaluating the size of vehicles in a manner consistent with the regulations in place in Bellevue and Kirkland. If included at all, the sunset clause should specify a time period of less than five years. Parking such large vehicles in neighborhoods creates safety concerns because they block sight distances.

Mr. Phil Miller, 6519 152nd Avenue NE, said he appreciated the fact that the City was considering regulations concerning the parking of RVs in residential areas. He said up to the point where the rights of others are impacted, everyone lives under a system that affords a great deal of freedom. As always, it is the actions of a few that makes the need to impose regulations on everyone a necessity. In recent years the size of RVs has grown considerably, and some are the size of private rail cars that were used by the rich in the 1890s, and they are parked in front of their homes. He said, however, that his concern is less with aesthetics than safety. Too often sidewalks are blocked, causing children and other pedestrians to divert into the street to get around; the problem is particularly acute for those in wheelchairs. There needs to be both enforcement and education in the community. The grandfather clause should be shortened to something far less than five years. The Bellevue ordinance takes the right approach in differentiating by size. Vehicles the size of Greyhound buses simply do not belong in neighborhoods; they cannot be screened and are very much out of place. The proposed ordinance is reasonable and respects those who play by the rules.

Mr. Charles Wittenburg, 6510 152nd Avenue NE, indicated his support for the proposed ordinance. He said not long ago a neighbor traded a 20-foot RV for

something much larger. As parked, the sight lines for drivers are impaired. Setbacks are established for a reason, and parking an RV in them effectively does away with them. He said he would oppose allowing any RV over a certain size in a driveway. He agreed that storage is expensive but said more such options need to be made available. Regulations are needed to protect the aesthetics of all neighborhoods. The proposed solution is simple and adequate, allowing both sides to have some flexibility.

Ms. Joanne Peterson, 8209 134th Avenue NE, asked the City to tread lightly on rules and regulations affecting private property owners. She agreed that safety issues should be addressed. She suggested that a size limit would be a good idea for RVs that have to be parked in a front yard.

Chair Snodgrass said he assumed that parking any vehicle so that it blocks all or any portion of a public sidewalk is a violation. Ms. Stiteler concurred, adding that it is safe to assume the majority of sidewalks are located on public rights-of-way. She pointed out, however, that there are sometimes areas beyond the sidewalk that look like private property that may in fact be part of the public right-of-way.

Mr. Brad Freeman, 10320 163rd Avenue NE, said he owns a camper that fits on the back of his pickup truck that could be stored on the property in accord with the proposed ordinance. He commented, however, that most of the yards in the Education Hill area are nicely landscaped and open between neighbors. Under the regulations as proposed, a screen would have to be constructed between neighbors to block the view of an RV. The screening would be more of a detriment to the neighborhood than an enhancement. Even if the regulations are followed, a five-foot screen would not hide a nine-foot-tall camper.

Ms. Stiteler indicated that a camper as described would not be considered a recreational vehicle under the proposed amendment.

Mr. John Parkinson, 13805 NE 71st Place, said it was his understanding that the right-of-way is the land allocated for a street and utilities within a plat. Typically a right-of-way is 50 feet in width, while the street itself occupies only 25 to 30 feet, leaving approximately ten feet of land between the edge of the street and the edge of the right-of-way. Water meters and light poles are typically located at the edge of the right-of-way. It is the responsibility of the property owner to maintain the sidewalk and right-of-way in front of their property, but the space should not be used for parking RVs, or for tall landscaping and fences to screen RVs. The use of the right-of-way should be clearly defined in the Community Development Guide. A parking definition

in the code may make enforcement easier. The grace period of five years is too long; two years should be sufficient.

Dr. Theodore Shure proposed that it would not be possible to screen an RV, especially the large ones. He agreed that parking any vehicle on a sidewalk is a hazard, but noted that that is already covered by existing regulations. It should not be necessary to handle isolated incidents by making everyone in the City comply with the new regulations. Most people drive appropriately through residential neighborhoods on the watch for small children running out from anywhere, including from behind parked RVs.

Mr. Bielecki, 13715 NE 72nd Place, suggested that no matter how much law is written, there will still be problems. That is because it is not possible to write a law to cover all situations. He suggested that the Director of the Planning Department should be allowed the ability to overrule the code and interpret a case based on its merits. As written, the regulations stated that the residential character of a neighborhood must be upheld. An RV parked sideways in front of a house represents an unusual case and should not be allowed because it is an eyesore.

Mr. Lee Laney, 13444 Old Redmond Road, asked how much the City has spent over the last year dealing with the issue, and if the new regulations will in fact be enforced given that other regulations already on the books are largely ignored.

Mr. Richard Walker, 7302 139th Place NE, asked the Commission to spend time focusing on public safety and to tread very lightly on private property rights.

With no other persons wishing to address the Commission, Chair Snodgrass closed the spoken portion of the public hearing. He said the public hearing would remain open to the submission of written comments.

BREAK

Chair Snodgrass asked the Commissioners to identify the major issues in need of being addressed. Commissioner Bernberg said she would like to see a size limit addressed, adding that the limits imposed by the Bellevue ordinance are satisfactory.

Commissioner Ku said the issues raised by the public were screening, the grandfathering period of five years, whether an RV can be used as a temporary dwelling, and whether or not any further regulations are

necessary at all. He thanked everyone for their testimony and pointed out that the ultimate decision resides with the City Council.

Commissioner Dunn thought the City's responsibility in regulating eyesores should be addressed, particularly as they relate to homeowners associations. She said there should also be some discussion relative to regulating safety. Screening is another issue to be discussed, as is the issue of a size or reasonableness test. She agreed that the grandfather time period should be addressed, along with whether RVs can be used for temporary dwellings, and the definition of driveway.

Commissioner Tucker agreed that the listed issues should be addressed. In addition she mentioned the issue of whether it should be necessary to distinguish between low- and high-density zones in the regulations.

Commissioner Bernberg said she would like more information about what the code has to say about sight distances, and the regulations concerning having the propane tanks turned off.

Chair Snodgrass thought the issue of giving the code enforcement officers leeway to deal with individual situations should be talked about.

Commissioner Ku asked is the code allows homeowners to seek variances from any applicable regulation. Ms. Stiteler said variances can be applied for and the process is very clearly defined. However, in most cases, variances are granted only in cases of actual hardship. Planning Manager Rob Odle added that variances generally deal with site development issues and not code enforcement issues. He said there is a review process included in the proposal, and it would be possible to include in the ordinance some discretion on the part of the person making the decision.

Commissioner Dunn added to the list the matter of on-street parking of RVs.

Chair Snodgrass raised the notion of including a reasonable access exception to the list of issues.

With regard to the issue of safety, Commissioner Bernberg said the issue is simply getting around a neighborhood safely. She said that would include children on bicycles and pedestrians of all ages as well as the disabled and those who are driving through the neighborhood.

Commissioner Dunn asked staff to highlight for the Commission at the next meeting what regulations are currently in place that relate to safety.

Commissioner Tucker said unobstructed sight lines down streets and through neighborhoods generally is a safety issue and clearly is important.

Chair Snodgrass proposed that parking any large vehicle on a residential street will pose some safety issues.

On the topic of screening, Commissioner Dunn said she would like to know what existing regulations apply to the issue. She said she also heard from the public the need to better define the public right-of-way and the regulations aimed at preventing sight distances from being impaired in any way. Ms. Stiteler said the technical definition of right-of-way is not the problem. The true difficulty is knowing where the actual legal line exists on the ground, and that cannot be determined unless there is a measurement taken.

Commissioner Dunn suggested that in some instances the 15-foot setback may not be sufficient to achieve the goal of safety. She asked if the setback is in fact determined for safety reasons. Ms. Stiteler said the setback determines the minimum distance a house can be located from the public right-of-way. The proposed regulations would prohibit parking in a front setback, except on a driveway. If a house were to be set back further than the minimum, a vehicle parked in front of the house may or may not be located in the actual setback. Commissioner Dunn said she was trying to determine if the setback distance is the appropriate distance to be used to solve the safety problem. Ms. Stiteler suggested that the two issues are separate.

Commissioner Tucker suggested that there should be some review of the way the term “setback” is used in the regulations. She said there was some confusion in her mind as to whether or not it referred to the required minimum distance between the right-of-way and the house, or all of the distance between the property line and the existing structure. She thought some focus should be given to whether or not there should be a minimum parking pad requirement.

Commissioner Ku suggested that the attractive nuisance doctrine may in some way be applicable to recreational vehicles, especially as it relates to children. Under the attractive nuisance doctrine, there is a legal obligation for an owner to mitigate the likelihood of injury.

With regard to screening, Commissioner Bernberg said she thought the proposed requirements were adequate.

Chair Snodgrass said the language "…must be sight screened from the closest abutting property or street right-of-way by sight-obscuring landscaping…" could be interpreted to mean that if the abutting property is closer than the right-of-way the screening must be in that direction, or toward the right-of-way if that is the closest. He asked staff to clarity that issue at the next meeting. He said a quick refresher as to what Type I landscaping is would also be helpful. Ms. Stiteler said that the information was included in the packet of information provided previously to the Commissioners.

Commissioner Tucker suggested that the amount of screening necessary should to some extent be predicated on the size of the vehicle to be screened.

Commissioner Ku held that the area of screening is one in which a certain degree of discretion should be permitted.

Commissioner Bernberg said she could support the five-year sunset clause as proposed. She said that is a fair amount of time to allow those with RVs to make plans for how to come into compliance. She said in cases of safety there should be a much shorter time period.

Commissioner Ku said he needed a better understanding of what the burden, financial or otherwise, would be on all RV owners if the proposed amendment were adopted.

With respect to the use of RVs as temporary dwelling units, Chair Snodgrass said the range of possibilities would be anywhere from overnight accommodations to much longer time periods. He asked staff to provide some information concerning what the current regulations are.

On the topic of whether any regulation is needed at all, Chair Snodgrass said clearly there is a need at the very least to clean up the existing regulations. Commissioner Bernberg said the issue of where and how to park RVs has been an issue for the code enforcement officers for some time. The existing regulations are ambiguous at best and must be revised. There was agreement that regulations are necessary.

Chair Snodgrass suggested that the topic of regulating visual aesthetics should be discussed first at the next meeting to see where the Commission generally stands.

Commissioner Dunn asked if there are any regulations in the code to enforce the Comprehensive Plan policies aimed at maintaining the character of

neighborhoods. Commissioner Bernberg said the policy basis for enhancing neighborhoods and maintaining neighborhood character is very ambiguous.

Mr. Odle said there is policy concerning preserving existing neighborhood character, and there are existing regulations dealing with RVs in the neighborhoods. The policy question is whether or not the current regulations go far enough, or if they should be strengthened. Commissioner Dunn asked staff to bring to the next meeting the policy language concerning neighborhood protection. Commissioner Tucker asked staff to also bring the policy language that concerns streetscapes.

Commissioner Dunn suggested that rather than tackling the issue citywide there may be some merit to establishing policy and regulation by subarea.

Chair Snodgrass commented that regulating visual aesthetics is a very touchy and controversial issue given that beauty is in the eye of the beholder. In isolation, well-maintained RVs are items of beauty; they provide opportunities for families to spend time together and often represent a considerable investment. He agreed, however, why someone having to look out their front window at a vast expanse of sheet metal would be upset. He said the only real changes being proposed to the existing regulations are the addition of screening requirements and changing the front setback parking requirements. He said he could vote in favor of the proposal.

Commissioner Tucker suggested that one of the major issues is the increasing size of RVs. As they become larger, their impact on visual aesthetics becomes greater. Ms. Stiteler said the Bellevue regulations allow nothing over 28 feet to be parked in the front setback, and nothing over 40 feet to be parked in residential areas at all.

REPORTS

Mr. Odle reported that the September 17 Council meeting ran late so the Hazardous Liquid Pipeline issue was not presented by staff. The matter is slated for study session on September 24 and for potential action October 1. He said a formal vote on the transmittal memo was needed. He added that staff intends to review with the Council the variance issue and will recommend using the reasonable use standard instead of the variance standard.

Motion to adopt the Commission report and forward it to Council for action was made by Commissioner Dunn. Second was by Commissioner Tucker and the motion carried unanimously.

Commissioner Dunn reported that earlier in the day she had had a wonderful experience riding the bus from the downtown park and ride lot to Seattle Center. She encouraged everyone to experience the wonderful transportation system. She also encouraged everyone to try using the King County Metro web site to plan trips.

SCHEDULING TOPICS FOR NEXT MEETING(S)

ADDITIONS TO ACTION LIST – None

ADJOURN

Chair Snodgrass adjourned the meeting at 9:52 p.m.

Minutes Approved On:	Recording Secretary:
10/23/02	Gerry Lindsay

APPENDAGE C

REDMOND CITY COUNCIL MINUTES

January 7, 2003

A regular meeting of the Redmond City Council was called to order by Mayor Rosemarie Ives at 7:30 p.m. in the Council Chambers. Council members present were: Cole, Dorning, McCormick, Misenar, Paine, Plackett, and Robinson.

RECOGNITION

Police Chief Harris announced the Redmond Police Department's receipt of its fifth Certificate of Accreditation from the Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA) on November 16, 2002. He thanked the Mayor and Council for their of support on this law enforcement accreditation effort.

The Mayor presented a certificate of appreciation from CALEA to Chief Harris and to Commander Marsh in recognition of their leadership.

INTRODUCTION

Fire Chief John Ryan introduced new Deputy Fire Chief Deb Ayrs.

ITEMS FROM THE AUDIENCE

John Parkinson, 13805 NE 71 Place, encouraged the Council to pass the ordinance regarding RV control. He noted issues that should be considered for the future, such as blue tarps used to cover the vehicles and temporary shelter.

Bill Danna, 13822 NE 73 Place, said he brought concerns about RV parking and storage in his neighborhood to the Council in 2001. The problem involved a 35-foot long RV that was parked on the street. He felt it damaged the aesthetic quality of the neighborhood and blocked views down the street, and created a safety concern. He encouraged the Council to pass the ordinance, and requested that consideration be given to the length of the two-year sunset clause.

William Westwater, 9507 167 Avenue NE, related the following issues of concern about how the proposed recreational vehicle (RV) ordinance is written:

- The purpose of the code is to maintain quality and character, not improve it. The ordinance should be structured to meet the policy

established by the Council – the question before the Council is not a policy question.
- The hierarchy outlined in the ordinance is an unnecessary intrusion on private life.
- Some residents who store RVs in their driveways have covered or screened them. An unintended consequence of the ordinance could be that they would have to move their RVs to the side or rear yard or into the garage. An unintended consequence could be that the cars that were in the garage would have to be parked outside.
- The ordinance could have significant expenses associated with it – screening, cost of offsite storage, even selling the RV.
- Time constraints – why is promptness suddenly so important?
- Technical changes as outlined in a detailed email to the Council.

Mr. Westwater urged the Council to consider all sides of issue before making a decision.

Wendy Dorothy, 2821 Northup Way, Bellevue 98004, speaking on behalf of John F. Buchan Construction, read a letter into the record from an attorney representing John F. Buchan Construction, Burnstead Construction, Lozier Homes, Camwest Development, Pacific Properties and Windward Development, regarding the proposed ordinance for NE 116 Street Improvement Impact Fee Overlay District. Issues highlighted in the letter include:
- The city did not issue notice regarding the proposed action to interested and affected property owners, and they have not had an opportunity to review the proposals or justifications, or provide comments.
- The proposed emergency ordinance ignores previous contributions and inadequately addresses the possibility of credits for offsite improvements.
- The city may undertake a process that results in duplicate mitigation requirements.

Ms. Dorothy requested that any proposal be brought to the Council through the regular amendment process to provide an opportunity to discuss the process with staff and to allow for public comment.

The Mayor announced the receipt of an email from John Ebensteiner, Lozier Homes, requesting the Council not adopt the proposed ordinance regarding interim fees for NE 116 Street Improvements Impact Fee Overlay District until there is an opportunity for the builders along NE 116 Street to review the proposal and have input into this issue.

The Mayor announced she received a phone call from Bernard Swain in opposition to the RV ordinance. Mr. Swain's biggest issue was that this is a volatile issue, and he thought notification should be issued to everyone who would be affected by the ordinance. He pointed out that many people who have RVs are not in town this time of year, and many of them would want to make their wishes known to the Council.

Robert Young, Lake Washington Youth Soccer Association, presented the
Council with a plaque in appreciation for its continued support of youth.

ORDINANCE – RECREATIONAL AND UTILITY VEHICLE PARKING IN RESIDENTIAL AREAS, DGA02-008

The Mayor, in a memorandum dated January 7, 2003, recommended adoption of this ordinance.

> Motion by Ms. McCormick, second by Mr. Robinson, to adopt Ordinance No. 2149, approving the Planning Commission's recommendation for the parking of Recreational and Utility Vehicles in residential areas. No changes to Comprehensive Plan policies are recommended; the proposed regulations are consistent with existing policies.

Councilmember McCormick related a conversation with a Redmond resident, and owner of a RV, who expressed concerns a year ago when this first came up. The individual suggested allowing people who have a RV to park it on the street or in the driveway for not more than forty-eight hours for packing, unpacking, cleaning, etc.

Sarah Stiteler, Planner, explained that according to the Redmond Municipal Code a RV cannot be parked on the street for more than twenty-four hours, but the regulation is enforced on a complaint basis only.

Councilmember Paine said he usually supports ordinances that have to do with the quality of life in Redmond. He pointed out that one individual who was concerned about the aesthetics of his neighborhood brought this issue to the Council. This neighborhood had covenants and restrictions, but they were allowed to lapse because the residents became apathetic and let the neighborhood association lapse. He said he has not seen a chronic problem with RV storage in the community, and he had grave reservations about whether the Council should adopt this ordinance.

Councilmember Robinson said he would support the ordinance. He thought there was enough flexibility, it was fair, and other jurisdictions have done it.

Councilmember Dorning said she would support it. She noted that this was in front of the Planning Commission for two years, so RV owners who aren't in town during the winter should have had enough time to make their views known. She thought it was a fair ordinance. She said as a real estate agent, in showing properties, having a big RV or trailer in the neighborhood can be unsightly and can make it difficult for someone trying to sell a home. She continued that it may not affect property values, but the longer a house is on the market the more likely the price has to be dropped.

Councilmember Cole agreed with Councilmember Dorning's comments. He noted that this ordinance is less restrictive that Bellevue's ordinance.

Councilmember Plackett supported the ordinance. She agreed with Mr. Danna that the two-year sunset clause should be shorter. She suggested that staff report back in one year on how it is working.

Councilmember McCormick said she would support the ordinance. She referenced page four of the September 18, 2002, Planning Commission minutes that lists testimony from someone who was against a RV ordinance but cited other things he sees in the city that are city-controlled issues. She said she hoped the Code Enforcement Officer would look at the list and see what could be done.

Councilmember Misenar supported the ordinance. He said he heard concerns about RV parking from several people in his neighborhood.

Ordinance No. 2149, amending the Redmond Community Development Guide in order to adopt regulations related to the parking of Recreational and Utility Vehicles in residential areas (DGA02-008), and to provide for a two-year amortization period; providing for severability and establishing an effective date, was presented and read.

> Upon a poll of the Council, Cole, Dorning, McCormick, Misenar, Plackett, and Robinson voted aye. Motion carried (6 – 1) with Paine voting nay.

ADJOURNMENT

There being no further business to come before the Council, the Mayor declared the meeting adjourned at 10:20 p.m.

GLOSSARY OF TERMS

Aesthetic – of or concerning the appreciation of beauty

Appellant - one who appeals a court decision

Arbitrary – determined by chance, whim or impulse. Not limited by law

Boards – organized bodies of administrators

Capricious – impulsive or unpredictable

Cities – incorporated U.S. municipalities with definite boundaries and powers set forth in a state charter

Compensate – to make payments to; reimburse

Commissions – a group authorized to perform certain duties or functions

Conferred – held a meeting

Councils – administrative, legislative or advisory bodies

County – an administrative subdivision of a state or territory

Derogation – taken away, detraction

Due process – an established course for legislative or judicial proceedings designed to safeguard the legal rights of the individual

Enjoin – to forbid

Injunction – a court order prohibiting or requiring a specific action

Municipal – having local self-government

Paramount – of chief concern or importance

Parish – an administrative subdivision in Louisiana that corresponds to a county in other states

Plaintiff – the party instituting a suit in court

Planning/Zoning Commissions – a group authorized to designate an area for a specific purpose

Police Powers – those powers extended from states to municipal governments therein with which to regulate health, safety, morals and welfare matters within their jurisdiction

Politics – the activities or affairs engaged in by a government

Promulgation – making known by public declaration

Statute – a law enacted by a legislature; a bylaw or decree

Statutory – enacted, regulated or authorized by statute

Towns – a population center larger than a village and usually smaller than a city

Township – a public land surveying unit of thirty-six square miles

Substantive – substantial, considerable

Unambiguous – not open to more than one interpretation

Unfettered – freed from restrictions or bonds

Village – an incorporated community smaller in population than a town

Zoning – designating a section of an area for a specific purpose, i.e., a residential zone