

Transportation staff asked the Madison Attorney’s office to comment on the ability to make revisions to Madison’s Parking Ordinances based on a draft policy discussed by the TPPB on December 7, 2020. The current purpose of the program is to prevent commuters from competing with residents for on-street parking. A change is evaluated because 1) this purpose does not allow the City to enforce RP3 parking beyond 4 pm, and 2) some TPPB members do not feel the purpose accurately reflects the City’s residential parking policy. In addition to changing the purpose, there are questions regarding additional tools that could be used to achieve objectives.

The following paragraphs are a summary of the discussions, emails, and papers received by them.

**1. Can the Purpose contained in MGO 12.138 be revised to the following?**

The purpose of Madison’s residential permit on-street parking program is to manage on-street parking to support Madison’s transportation objectives while providing adjacent residential, commercial, and institutional land use parking according to need.

- Business uses access on-street parking according to need.
  - *(Under-parked businesses in older developed areas would have priority to on-street parking.)*

*This can be part of the City’s/Parking Division’s **policy** on where to allow parking and where to place meters, but it is not relevant to the RP3 ordinance which is directly tied to Wisconsin Statute.*

*Wisconsin Statute § 349.13(1g) and Wisconsin Statute § 349.13(1k)(a) allow only residents to have priority in parking contrary to posted parking restrictions on the street, and as a result, the residential parking program serves to limit non-residential parking on residential streets. The single exception under Wis. Stat. § 349.13(1k)(a) allows guests of residents and companies providing services to residents to park contrary to posted prohibitions.*

*Wisconsin Residential Parking Statutes do not allow a separate permit policy for business employees or patrons nor does it allow for on-street parking to be reserved for specific businesses.*

- Residential uses access on-street parking according to need.
  - *(Residential properties with limited off-street parking would be given priority.)*

*Yes, residential parking purposes are a permissible purpose and comply with Wisconsin statutes. The drafter’s analysis for the 2016 ordinance amendment to Madison General Ordinance 12.138(14) states that the ordinance allows parking to those residents who do not have alternative off-street parking options available through their residence. This proposed purpose aligns with the original goal to preserve parking spaces for those with limited or no off-street parking options. Additionally, in the Supreme Court decision referenced in the 2016 memo, *Cty. Bd. of Arlington Cty., Va. v. Richards*, 434 U.S. 5, 7 (1977), the Court ruled that the County could issue permits to residents of especially crowded areas visited by commuters. One of the County’s objectives acknowledged by the Court, “to protect the residents of those districts from unreasonable burdens in gaining access to their residences,” applies in our context. Similarly,*

*Madison residents can also be afforded the convenience of on-street parking in areas where there is a greater need for parking.*

*Parking permits can be distributed according to need (eg available off-street parking) because the parking options available to different residents is a rational reason for distinguishing between residents.*

- Access to transit system is accommodated.
  - *(Commuter parking is not fully prohibited)*  
*This can be part of the City's/Parking Division's **policy** on where to allow parking, but it is not directly relevant to the RP3 ordinance which is tied to Wisconsin Statute.*
- TDM measures are supported.
  - *(Paid/limited off-street parking is not undercut by free on-street parking.)*  
*This can be part of the City's/Parking Division's **policy**, which influences residential parking ordinances and fees. This is ultimately achieved with the restrictions imposed on-street parking.*
- It also seeks to promote sustainable development, such as infill development, to meet the City's Green and Resilient goals.

*This can be part of the Parking Division's policy for implementing a residential parking permit program – eg that infill developments do not impact existing residential neighborhoods, which foster opposition to these project.*

*It would be better to amend the purpose to “require new residents to use off-street parking options and preserve on-street parking for existing residents who lack alternative off-street parking options” should be allowed as an extension of what the City has in place under MGO 12.138(14). New residents having alternative off-street parking options, where existing residents don't, is a rational reason to distinguish between the two. This amendment should justify parking restrictions that prevent new residents from parking on the street. We can amend the ordinance to exclude other residents not eligible for the RP3 program.*

## **2. Can the Following Tools Be Implemented?**

The tools the City has to manage parking are limited by state statute, which include: § 349.13(1g) and § 349.13(1k).

- Establish permit/metered parking only (PPO) restrictions in residential locations where commuter and transit user parking demand are high with low demand for on-street parking from residents– which would allow any member of the public (residents or non-residents) to park in these zones. (eg metering by signage rather than physical meter.)

*This **might** be allowed. Wis. Stat. 349.13(1e) “[L]ocal authorities . . . may, within the reasonable exercise of the police power, prohibit, limit the time of or otherwise restrict the stopping, standing or parking of vehicles beyond the prohibitions, limitations or restrictions imposed by ch. 346, except that they may not modify the exceptions set forth in s. 346.50.”*

*We cannot create a program under the Residential Parking Program allowing for commuters to have parking permits. Our state statutes governing the Residential Parking program (Wis. Stat. § 349.13(1g) and Wis. Stat. § 349.13(1k)(a)) would not permit such an action, even if the permits are limited to capacity. Those two statutes serve to benefit residents only.*

*However, Wis. Stat. § 349.13(1e) could be read to allow the City to “regulate” parking in various areas to allow a permit of some sort. The high density areas, for example, would provide a rational reason for the differing treatment in allowing permits in certain areas over others (and also for certain businesses over others).*

- Allocating on-street parking permits in proportion to the amount of off-street parking associated with the parcel.

*This would be allowed because the parking options available to different residents is a rational reason for distinguishing between residents in the distribution of parking permits. A system would need to be developed for prioritizing who is eligible for the limited number of permits.*

- Vary permit pricing to correspond to need or parking capacity.

*Parking Capacity - Statutes probably do not allow the City to charge more for parking permits simply because there are more vehicles than there are available parking spaces (eg a market pricing approach). Wisconsin Statute § 66.0628(2) requires that the price of the permits “reasonably relate” to the service of the Residential Parking program, the increase in the price for the individual permits cannot exceed the cost of administering the Residential Parking Program.*

*Parking Need – The price of a parking permit could be related to the parking need (eg if a residence has no off-street parking their permit would be less expensive) so long as the fees of the residential parking program reasonably relate to the cost of administering the Residential Parking Program. While an increase in cost for those residents with off-street parking appears to be a rational reason for a price difference, to fully comply with the law, we should must that those areas with off-street parking results in a greater cost to the program.*

- Limiting permits related to capacity.

*As for residents, Wis. Stat. § 346.50 through Wis. Stat. § 346.56 on parking restrictions and Wis. Stat. § 349.13, which govern the residential parking program do not describe any statutory authority that restricts the application of the law on residential parking privileges to a specific number of vehicles owned by residents. For example, both Wis. Stat. § 349.13(1g) and Wis. Stat. § 349.13(1k)(a) on the Residential Parking program merely state that residents are allowed “to park their vehicles,” without specifying a quantity of vehicles that may park without regard to posted time limits or prohibitions.*

*However, these statutes do not prevent the City from limiting permits for residents related to capacity either. It may be reasonable to evaluate the capacity for parking, as it concerns residents who seek to park their vehicles in their residential areas which have limited parking stalls. The change to the ordinance could be made as long as the change has a rational relationship to a legitimate objective and this concept likely satisfies this requirement. Limiting*

*permits in this context could help ensure that residents are treated equally and will have more equal access to parking stalls, if they are all subject to the same vehicle limitations/allowances. For example, this could potentially prevent one resident with multiple vehicles, from having more of an advantage (by taking up more parking stalls) than another resident who has only one vehicle, but a smaller chance of having a stall available when needed. This limitation can further reduce overcrowding. This restriction could be implemented because all residents will be treated similarly in accordance with the Equal Protection Clause.*

- Increasing the cost of the on-street permit with each successive vehicle.

*Wisconsin Statute § 66.0628(2) requires that the cost not exceed reasonable direct costs that are associated with any activity undertaken by the City that is related to the fee. It may be possible to increase the cost with each successive vehicle if the collected fees reasonably relate to the cost of the Residential Parking Permit Program. As described above, we must show that a successive vehicle would result in a greater cost to running the program.*

- Permits only provided to motor vehicles legally registered at the address.

*Yes, this is possible. MGO 12.138 (8)(b) which allows temporary residents to obtain permits, could be repealed.*

- Switch from RP3 to RPO for more efficient enforcement and increased hours of enforceability.

*There are no statutory restrictions on the creation of a complete RPO program. Madison City ordinance restricts half of the block to resident permit holders, which could be amended in order to accomplish the RPO transition.*

*Wisconsin Statute § 349.13 (1k)(a) would allow for this new type of program. There would need to be signage in place indicating that the area is for “resident parking only.”*

- Provide visitor passes for permit holders.

*Switching to RPO would allow for permits to be issued to “guests of such persons, and commercial enterprises providing services to such persons.” See Wis. Stat. § 349.13(1k)(a).*

- Streets with no significant competition for parking are ineligible for RP3 or RPO, but may be eligible for PPO.

*See 1<sup>st</sup> bullet point under Tools.*

- Residential streets near retail businesses with limited off-street parking options would be ineligible for RPO; short-term parking to be accommodated. Place meters or otherwise allow short-term parking for half-blocks on streets that are perpendicular to retail streets (Willie, Monroe, etc.).

*Yes, placing meters or allowing short-term parking on the street for non-residents would be allowed as long as residents are still able to participate in a part of the Residential Parking*

*Program and park contrary to the meter/posted time restrictions. We cannot use the “Residential Parking Program” to explicitly prioritize the parking needs of businesses. But meters and short term parking is allowed.*

- Place parking restrictions automatically or as an opt-out to minimize residential parking impacts near redevelopment projects implementing TDM.

*This would be a policy decision related to development approval. MGO 12.138 would need to be changed regarding eligibility.*

*Logistically there could be concerns in that residents without knowledge of the project would all of a sudden need a parking permit.*