

City Attorney Responses (DRAFT)

Questions Regarding Parking Permit Only (PPO)

2/9/2021

1. Can we exempt residents from PPO?

- As for a future, potential PPO program, I do not think that residents could be exempt from this. In reviewing the two residential parking statutes, (1) Wis. Stat. § 349.13(1g) indicates that residents can park without regard to the time limits posted if their “residences” abut a highway in a zone where the time of parking is limited. Similarly, (2) Wis. Stat. § 349.13(1k)(a) indicates that residents can park without regard to the posted prohibitions if their “residences” abut a highway in a zone where parking is prohibited by official signs. Pursuant to these statutes, I do not believe residents can be exempted from a potential PPO program if the streets are not residential streets. The residential parking statutes would not apply to extend parking privileges to residents in a program that does not include residential streets.

2. Can we create a subsidy or charge lower rates for residents in the PPO program?

- The answer to this question is derived from the response above. In sum, I do not think we would be able to give residents preferential treatment with a PPO program, especially given that those areas are not residential streets as explained above. In this case, we would be distinguishing between residents and non-residents without a rational reason. I do not think that favoring residents who purchased a RP3 permit would amount to a rational reason that justifies the difference in rates here. Besides that single exception (purchasers of the RP3 permit), residents and non-residents are essentially in the same position in seeking parking and should not receive varying treatment.

3. Are there limits on what we can charge for PPO program? Does Wis. Stat. § 66.0628(2) apply?

Wisconsin Statute § 66.0628 Fees imposed by a political subdivision

(1) In this section:

(a) “Political subdivision” means a city, village, town, or county.

(b) “Reasonable relationship” means that the cost charged by a political subdivision for a service provided to a person may not exceed the political subdivision's reasonable direct costs that are associated with any activity undertaken by the political subdivision that is related to the fee.

(2) Any fee that is imposed by a political subdivision shall bear a reasonable relationship to the service for which the fee is imposed.

- Yes. Wis. Stat. § 66.0628(2) explicitly indicates that the statute applies to “Any fee that is imposed by a political subdivision.” This statute is broadly written and its

application is not limited to specific services provided by the City. Therefore, as a political subdivision, the City cannot charge just any amount even though we are exploring the possibility of creating a different type of program than what we currently have. The statute will always apply as long as “a fee” is imposed. This would apply even outside of Parking matters. Similar to the RP3 program, we are limited in what we can charge pursuant to this statute. We must ensure that there is a reasonable relationship between the fee imposed and the services for which the fee is imposed. The costs of both enforcing and administering this type of program are “reasonable direct costs” that can be factored into the fee charged for the permit. Again, similar to the RP3 program, we would be limited to the costs of running any potential PPO program.

4. Instead of having residents vote for the RP3 program can we void that requirement?
 - Yes, we can repeal this requirement. Upon reviewing the residential parking statutes, Wis. Stat. § 349.13(1g) and Wis. Stat. § 349.13 (1k)(a), the statutes do not require a voting requirement for participation in this program. This voting requirement was established internally and can be removed from MGO 12.138.
5. Can we increase the meter fees to the market market rate? Does Wis. Stat. § 66.0628 apply to meters?

- **Short answer:** The two statutes that apply here are Wis. Stat. § 349.14 (discussed below) and Wis. Stat. § 66.0628, the latter of which applies in all contexts in which the City imposes a fee, not just for parking permit programs. Thus, Wis. Stat. § 66.0628(2) would apply to meter fees. Meter fees (and increases to meter fees) can include costs “for general street and highway maintenance, repair and construction, for meeting the cost of traffic and parking regulation, for the purchase and operation of publicly owned off-street parking facilities, and for such other expenses . . . the local authority deems reasonably necessary [.]” *See Wis. Stat. § 349.14.*

Long Answer/More in depth analysis:

- Wis. Stat. § 349.14 states that, “[t]he use of parking meters . . . is . . . determined by local authorities.” However, WI Stat 66.0628(2) states, “Any fee that is imposed by a political subdivision shall bear a reasonable relationship to the service for which the fee is imposed.” Wis. Stat. § 66.0628 defines “political subdivision” and “reasonable relationship,” but it does not define “fee.” Nevertheless, the language in Wis. Stat. § 66.0628(2) is clear that the statute applies to “Any fee that is imposed by a political subdivision.” This language is broad, which strongly suggests that it applies broadly to any fee that is charged by the City. In addition, 66.0628(1)(b) states that “the cost charged . . . for a service provided to a person may not exceed . . . reasonable direct costs.” This language strongly supports the position that the cost charged for using a meter cannot exceed the cost of the meter program. The statute does not outline any exceptions for specific services provided by the City, and thus the same statute

applies when a person is charged for using a meter.

- Although the prices for meters are set internally, the fee must still bear a “reasonable relationship to the service” (or cost of the meter program) pursuant to that statute. Therefore, we cannot charge a higher rate simply because other cities charge higher rates or rates that match the market rates. Also, even if this restriction is not currently written in our Madison General Ordinances, we are governed by Wisconsin Statutes. The statutes grant the City authority to enact certain ordinances and either exercise discretion in certain areas or act according to statutory limits. Thus, because Wis. Stat. § 66.0628(2) is in place, we must act according to this statutory limit.

Wisconsin Statute § 349.14 Authority to use parking meters.

(1) It is the public policy of this state that the use of parking meters by cities, villages, towns and counties to measure the time for parking vehicles is a local matter to be determined by the local authorities.

(2) Cities, villages, towns and counties may by ordinance or resolution provide for the installation and operation of parking meters and may provide for the use of the revenue collected from such meters for general street and highway maintenance, repair and construction, for meeting the cost of traffic and parking regulation, for the purchase and operation of publicly owned off-street parking facilities, and for such other expenses and purposes as the local authority deems reasonably necessary to provide for the convenience, safety and welfare of persons using the streets and highways for vehicular traffic.

- In addition, under 349.14, the City appears to have greater flexibility in the direct costs that can be considered in establishing meter fees as opposed to parking permit programs. We still must follow 66.0628(2) and ensure that there is a reasonable relationship between the “direct costs” of the service provided by meters and the “fee” imposed, but the meter fees can include more factors in its calculation. For example, as copied above, Wis. Stat. § 349.14 allows the City to use the revenue collected from meters “for general street and highway maintenance, repair and construction, for meeting the cost of traffic and parking regulation, for the purchase and operation of publicly owned off-street parking facilities, and for such other expenses . . . the local authority deems reasonably necessary [.]” These factors are reasonable direct costs that can be considered in determining the meter fees. The revenue collected from the meters to provide for the factors in that list (e.g. repair and construction) could reasonably relate to the costs of the meter fees. We could amend the ordinance to provide notice on how the City is using the revenue, to show how the cost of the meter fees is justified and reasonable. The meter fees can be increased to include the factors listed in 349.14, plus those “expenses and purposes as the local authority deems reasonably necessary to provide for the convenience, safety and welfare of persons[.]”

- Unlike meters, I have not located any statute similar to 349.14 for parking permit programs, which would allow for greater flexibility in determining the fee charged for parking permits. For parking permits, we are bound by 66.0628(2).