

**CITY OF MADISON
OFFICE OF THE CITY ATTORNEY
Room 401, CCB
266-4511**

To: Transit and Parking Commission Subcommittee
From: Amber McReynolds, Assistant City Attorney
Cc: Sabrina Tolley, Assistant Parking Utility Manager
RE: Legal Questions Regarding Parking
Date: June 9, 2016

Review on Parking Law in General

As a general matter, Wisconsin State Statute restricts local regulation of public highways. Under Wis. Stat. § 349.03(1):

No local authority may enact or enforce any traffic regulation unless such regulation:

- (a) Is not contrary to or inconsistent with chs. 341 to 348 and 350; or
- (b) Is expressly authorized by ss. 349.06 to 349.25 or some other provision of the statutes.

State statutes govern parking under Wis. Stat. § 346.50 to § 346.56. The state authorizes municipalities to regulate parking beyond the regulations in Chapter 346 “within the reasonable exercise of police power.” Wis. Stat. 349.13(1e)(a). In other words, Common Council may regulate parking under its “power to act for the government and good order of the city, for its commercial benefit, and for the health, safety, and welfare of the public.” Wis. Stat. § 62.11.

Review of Residential Parking Permit Program (RP3)

The authority for residential parking programs is covered in specific subsections of Wis. Stat. § 349.13. Wis. Stat. § 349.13(1g) authorizes programs in which residents can park without regard to posted time limits. Wis. Stat. § 349.13(1k) authorizes programs in which residents can park without regard to posted prohibitions. Wis. Stat. § 349.13(1e)(c)2 sets out additional requirements for parking regulations that limit or restrict parking for more than 24 consecutive hours or between the hours of midnight and 7:00 a.m. These additional requirements include a notice on official traffic signs at the corporate limits of the City on all state and county highways informing of the 24-hour or night parking regulations and a 2/3 vote of Common Council.

Under the City's current RP3 ordinance, permit holders may park "1) in excess of the posted time limits on specifically designated streets within certain designated areas between the hours of 8:00 a.m. and 6:00 p.m. or 2) in locations designated for resident parking only between the hours of 8:00 a.m. and 6:00 p.m." MGO 12.138(1). "Resident parking only" is the designation given to a residential permit parking street where approximately fifty percent (50%) of the lawful on-street parking spaces are posted as parking for residents only between the hours of 8:00 a.m. and 6:00 p.m. MGO 12.138(3)(j). "In excess of posted time limits" is the designation given to a residential permit parking street where lawful on-street parking is restricted to posted time limits. MGO 12.138(3)(k).

In addition to statutory requirements, the Equal Protection Clause requires that distinctions drawn by a residential parking program ordinance must "rationally promote the regulation's objectives." *Cty. Bd. of Arlington Cty., Va. v. Richards*, 434 U.S. 5, 7 (1977). The *Arlington County* case is about a parking program that distinguished between residents and non-residents. The City Attorney's Office is unaware of any case law which addresses a parking program that distinguishes between different types of residents. Currently, the City's stated purpose or objective for RP3 is as follows:

Purpose. The purpose of this provision is to establish a mechanism whereby area residents will be afforded an opportunity for the limited storing of vehicles on public streets to the partial exclusion of commuter vehicles. It is intended that this residential parking Ordinance will reduce automobile commuting and its accompanying energy waste and air pollution, reduce the total vehicle miles of travel in the affected area, and alleviate traffic congestion, illegal parking, and related health and safety hazards.

In addition, this ordinance is designed to promote the use of off-street parking by residents of the property instead of by commuters, to aid in the enforcement of parking regulations by requiring payment or court appearance for outstanding parking citations before issuance of a permit. MGO 12.138(2).

Any changes to the current program either need to rationally promote the current objectives in MGO 12.138(2), or the ordinance would need to be changed and designed to rationally promote a different legitimate objective.

Questions Related to RP3

1. How can the City legally restrict some residents from parking on the streets or participating in a residential parking program?

First, some residents are restricted from participating in RP3 due to conditions imposed by the City Plan Commission. A residential parking permit will not be issued “to the owner or operator of a motor vehicle who resides on any residential property which is specifically restricted by condition imposed by the City Plan Commission or by other valid use restriction prohibiting residents of said property from obtaining residential parking permits.” MGO 12.138(7).

Second, the current ordinance restricts eligibility of new developments to properties of three units or less based on the theory that this restriction rationally promotes the stated purpose of the program. The drafter’s analysis for the ordinance amendment to MGO 12.138(14), enacted on January 14, 2016, designating the eligibility of properties states:

This proposed subsection will address parking concerns in high density areas utilizing the Residential Parking Permit Program (“RP3”). The goal of this ordinance is to reduce commuter impact and promote the use of off-street parking. The ordinance prevents overcrowding on the streets and allows parking to those residents who do not have alternative off-street parking options available through their residence.

Multi-unit dwellings can place a strain on available residential parking. Some multi-unit dwellings offer off-street parking. Theoretically, this off-street parking should reduce the impact multi-unit dwellings have on the RP3 and commuter parking. However, residential off-street parking spaces do not minimize the impact of commuter parking unless the parking spaces are actually being used by residents. When residents do not utilize available off-street parking, they are creating a market for commuters to buy the off-street parking intended for residents. Once these spots are used for commuter parking, residents park on the street and essentially become a proxy for the commuter driving into the area. This ordinance could reduce commuter impact by decreasing the availability of “commuter proxies.” It will encourage residents who live in large multi-unit dwellings to utilize the off-street parking available at their residence.

This proposed subsection would limit RP3 eligibility for future developments approved for construction after the effective date of this ordinance. Residents who live in buildings approved for construction after that date will only be eligible to apply for RP3 if the dwelling has three units or less...(emphasis added).

Although the eligibility restriction affects some residents and not others, it still fits in with the overall purpose of the program and rationally promotes the stated objectives in MGO 12.138(2) using the commuter proxy theory.

2. Could the City change RP3 hours permanently or through a pilot program?

If the changes to the hours are consistent with the City's current ordinance or a new ordinance which states a rational relationship to a legitimate purpose, yes. As mentioned above, the reason that eligibility requirements are related to the program's objective is because they relate to the commuter proxy theory. It may be difficult to continue to use the same commuter objective and rationale with extended hours. In addition, changes to the ordinance should be consistent with the program's current criteria. This issue is addressed further in the answer to question 3.

Pilot programs to extend the current RP3 program should follow the criteria in the ordinance as well as the statutory and Equal Protection considerations mentioned above. Creating a temporary program does not create an exception to following applicable law.

3. If the City were to extend RP3 hours under the current commuter rationale, would this require a commuter impact study? Would it require a petition or a public hearing?

Since the City's RP3 has historically required resident input for an optional program, the same process that residents used to opt in should apply for substantive changes to the program. Although nothing in the state statutes requires a petition, study, or hearing to establish or change a residential parking program, these and other requirements are in the current ordinance. In the interest of fairness and keeping with the original intent of the ordinance, changes should meet the criteria and public hearing process of 12.138 (4), (5), and (6).

For example, if the City were to change RP3 hours to include enforcement during evening hours under the current program, the change should meet the current ordinance's criteria. This would include a commuter impact study showing that the parking spaces at issue are occupied by commuter vehicles a majority of the time during the extended hours. 12.138(4)(c). Traffic Engineering should complete the commuter impact study in a manner consistent with other RP3 commuter impact studies. A commuter impact study shows how the enforcement hours of the program relate to the program's stated purpose. Additionally, more than fifty percent of the residents of the street and block for residential permit parking must have a desire and need for RP3, and a willingness to pay for the cost of the program. 12.138(4)(d).

4. Could RP3 be changed to restrict overnight parking?

If the changes are consistent with the City's current ordinance or a new ordinance which states a rational relationship to a legitimate purpose, the program could restrict overnight parking. Wis. Stat. § 349.13(1e) gives requirements if the parking program limits or restricts parking for more than 24 hours or between the hours of midnight and 7:00am: this type of ordinance would need a 2/3 vote of Council and official traffic signs placed at the corporate limits of the City on all state and county highways informing of 24-hour parking or night parking restrictions (similar to snow emergency signs).

5. Could RP3 be extended to include guests?

Yes. The statute allows for "guests of authorized persons." Currently, the City's ordinance does not have a guest pass program, but the City could create such a program with ordinance changes.

6. Could guests of residents who are not eligible for RP3 get permits?

No. Wis. Stat. § 349.13(1k) includes “guests of authorized persons,” so if the resident is not authorized, their guest would not be able to get a guest permit.

7. Could the City allow for people with permits to park at meters without paying or being subject to time limits during hours when the meters are enforceable?

Yes. It would be possible to allow residents with RP3 permits to be park in excess of posted time limits or be exempt from paying meters if the current ordinance is amended. Currently, MGO 12.138(9) prohibits RP3 holders from parking in metered spaces. The City could amend 12.138(9) and either amend 12.145 and add this as an exception, or add a section in the RP3 ordinance outlining the use of meters.

Under Wis. Stat. § 349.14, parking meters are a “local matter to be determined by local authorities” and cities may “provide for the installation and operation of parking meters.” The City “...may authorize persons whose residences abut a highway in a zone where the time of parking is limited by official signs, pavement markings, or parking meters to park their vehicles in the highway zone without regard to the time limits posted.” Wis. Stat. 349.13(1g).

8. What can the City consider when determining the fee for a RP3 permit?

A fee imposed by the City must bear a “reasonable relationship to the service for which the fee is imposed.” Wis. Stat. § 66.0628(2). Reasonable relationship means that the cost charged “may not exceed...reasonable direct costs that are associated with any activity...that is related to the fee.” Wis. Stat. § 66.0628(1)(b). If someone challenges the fee, they can appeal to the Wisconsin Tax Appeals Commission and the City would “bear the burden of proof to establish that a reasonable relationship exists between the fee imposed and the service for which the fee is imposed.” Wis. Stat. § 66.0628(4).

Therefore, the City can consider costs of the program such as staff and supervisory costs of administering the program, printing, ordering, mailing, tracking, signage, etc. The City could consider enforcement costs as long as it could justify these costs with information and numbers that estimate how much money is spent on RP3 enforcement. Money brought to the City through forfeitures does not need to be taken into consideration to counter the costs of running or enforcing the RP3 program. The cost of providing the service of the RP3 program is separate from money gained from forfeitures of those violating RP3 ordinances.

9. Can the City practice “selective enforcement” of parking violations?

No. If the City has a parking program, it should not only enforce the parking regulations in select areas.

Non-RP3 Questions

10. Would an ordinance change be required to do a “pilot program” for extended hours of on-street meter enforcement?

Yes. The City could create a “pilot program” with an extension in meter enforcement by creating an ordinance with a “sunset clause” where the ordinance expires on a certain date unless extended by the Common Council prior to the expiration date.

11. Does the City currently have signs regarding parking at the corporate limits of the City on all state and county highways?

Yes.