



Caring People ♦ Quality Programs ♦ Exceptional Service

Item No. 31
MEMO

To: Mayor and City Council
From: Mark Lambert, City Attorney
Date: March 10, 2023
Subject: Living in Vehicles on City Streets

This memo is to facilitate the Council's discussion on the matter of persons living in vehicles on City Streets, particularly in residential neighborhoods. The City Council requested a memo regarding this topic to be placed on a future agenda at the February 14, 2023 City Council meeting.

There seem to be several potential approaches to dealing with this issue, including:

1. An ordinance prohibiting someone from living in a vehicle on public property, including city streets, or just in residential areas.
2. Limits on the size or types of vehicles that can park on city streets in residential neighborhoods.
3. Limits on the length of time larger vehicles, such as recreational vehicles (RVs) and campers can be parked on city streets in residential neighborhoods.

I was unable to find any ordinances nationwide that directly prohibit people from "living" in their vehicle, i.e., making their vehicle their home. I suspect that there were concerns that an outright ban on living in a vehicle might have constitutional problems or be viewed as criminalizing homelessness. I would be hesitant to suggest that the Council outright ban people from living in their vehicles. In recent decades the courts have struck down loitering and vagrancy ordinances, and this might be seen as being in the same category.

There are ordinances in place around the country that have a similar effect -- these usually involve prohibiting people from sleeping in the vehicles during the overnight hours. The City of San Diego passed an ordinance prohibiting people from sleeping in their vehicles from 9:00 p.m. to 6:00 a.m., or within 500 feet of a residence or school (with an exception near colleges and universities). The City of Fairhope, Alaska passed an ordinance prohibiting people from sleeping in a vehicle between the hours of 10:00 p.m. and 6:00 a.m., except in certain areas such as campgrounds.

The ordinances prohibiting people from sleeping overnight in their vehicles were generally reported by the media as ordinances "prohibiting people from living in their cars," and were criticized by some for "criminalizing homelessness." The Council

might want to consider that in a university town with sports events, it might be better to have people sleeping in their vehicles rather than driving drunk or exhausted.

The City of Lacey, Washington, passed an ordinance that prohibited the parking of recreational vehicles, motor homes, mobile homes trailers, campers, vessels or boats upon the improved or unimproved portion of any street, alley, public right-of-way, or publicly owned parking lot for more than four hours. This ordinance was passed after several people living in RVs and similar vehicles parked and lived in a city-owned public parking lot. A lawsuit was filed claiming the ordinance was unconstitutional under the First Amendment, constitutional guarantees of freedom of travel, and other constitutional provisions. In *Potter v. City of Lacey*, 517 F.Supp.3d 1152 a federal court dismissed a constitutional challenge to the ordinance.

The City of Ames already has a zoning ordinance prohibiting “in all zones whether on public or private land” the “parking of trailers or motor vehicles used for human habitation or any accessory use, except for use incidental to construction or emergency shelter for up to 30 days by persons whose dwelling has been made uninhabitable by fire or other casualty. [Ames Municipal Code 29.304(3).] However, “public land” would include only City parking lots, parks, or ground; the term “public land” does not generally include city streets. This section of our zoning code would appear to prohibit living in a vehicle even on private property, throughout the City.

Other cities have limited the length of vehicles that are allowed on City streets:

- Cedar Rapids prohibits any “motor truck, trailers, semi-trailer, truck tractor or motor home which exceeds 84 inches in width or 20 feet in length on any street between sunrise and sunset for a period longer than 60 minutes, or between sunset and sunrise for more than 30 minutes, or while in the actual process of being loaded or unloaded or making necessary minor repairs. [Cedar Rapids Municipal Code section 61.096].

- Iowa City limits vehicles parked in residential neighborhoods to a maximum of 7 feet in height, 8 feet in width, or 20 feet in length to be parked on a street in any residential district, with an exception for loading and unloading, and in no case more than 48 hours. [Iowa City Municipal Code 9-4-4.] (The average size of a school bus is 35 feet long and 8-9 feet wide). One advantage of this approach is that sometimes semi-trucks are parked on City streets creating visibility issues for drivers, and this approach could deal with that problem, too.

- Council Bluffs sets a 24-hour limit on parking a motor vehicle on a public street. [Council Bluffs Municipal Code, section 9.32.290.] Des Moines has a similar 24-hour limit. [Des Moines Municipal Code section 114-361.13]

- The City of Ames’ time limitation on parking a vehicle on public streets is 48 hours. [Ames Municipal Code section 18.9]

I note that ordinances setting time limits can be quickly thwarted by the person moving the vehicle a few feet every 48 hours. Some cities require that a vehicle that reaches a time limit after it has been parked must be moved to another block, or a certain distance, such as one mile away.

Range of possibilities for the Council to consider:

1. An outright ban on use of a vehicle for human habitation (i.e., living in) while parked on City streets, or City streets in residential areas.
2. Prohibiting persons from sleeping in vehicles parked on City streets overnight.
3. Establish limitations for vehicles or for vehicles over a certain size, such as:
 - a. Limit the size of vehicles that can be parked on City streets (or streets in residential areas).
 - b. Limit the time that a vehicle may be parked on a City street, less than the current 48 hours in our Municipal Code.
 - c. A limit that vehicles over a certain size can only be parked in a residential area while loading/unloading, and maybe an exception for construction-related vehicles.
 - d. Require that a parked vehicle, upon reaching the maximum time limit, must be moved a certain distance (e.g., next block, one mile).

As stated above, the options numbered 1 and 2 might face constitutional problems or difficulties from an enforcement perspective. There are various items under option #3 that, either alone or in combination, could address the issue.