City of Peoria • 8401 West Monroe Street • Peoria, Arizona 85345

OFFICE OF THE CITY ATTORNEY

CIVIL	602-412-7330
PROSECUTOR	602-412-7335
FACSIMILE	602-412-7043

OPINION NO. 95-02

TO: Philip V. Bloom, Development Services Director

FROM: Stephen M. Kemp, City Attorney

DATE: January 23, 1995

SUBJECT: Ordinance 92-20

QUESTION:

Clarification of Ordinance 92-20 as it pertains to commercial vehicles:

1. Does this ordinance require any vehicle that is over 9,000 pounds, and parked in the rear yard behind a screening wall be totally screened from public view by the screening wall.

2. If a commercial vehicle may be parked in the rear yard behind a screening wall and the vehicle is something purely commercial, is this in conflict with Article 14-5, which specifies permitted uses in residential areas.

OPINION:

I would like to apologize for the delay in getting out this response, however in reviewing the ordinance, I believe these questions still arise. Therefore we are proceeding to issue this

formal opinion on the issue.
Ordinance 92-20, now Section 14-112 of the Peoria City Code of 1992 provides:

(a) No person shall stand or park a vehicle with a gross vehicle weight rating in excess of nine thousand (9,000) pounds, or a tractor, semi-trailer, trailer, or bus or a vehicle with a name, trademark or logo located either on the sides or the rear of the vehicle, in sharp contrast to the background and of such size, shape and color as to be readily legible during daylight hours from a distance of fifty feet, on any real property within a residential zoning district within the city, except during the process of loading or unloading the vehicle, or unless parked or placed in a rear yard or screened area not visible from the public street or roadway.

A basic rule of statutory or code interpretation is that the particular statute or code provision should not be interpreted to create an absurd result. City of Phoenix v. Superior Court in and for Maricopa County, 144 Ariz. 172, 696 P.2d 724 (App. 1985). In this case, one could argue that a ten or even fifteen foot fence in some cases would be needed to screen completely a commercial vehicle parked at a residence.

Such a result would appear to be contradictory of one of the basic reasons for screening the rear yard, that being to avoid clutter and debris in front yards resulting in a "blighted appearance." Further such an interpretation, could result in construction of near buildings, without the regulatory requirements imposed for walls that are part of structures. Statutes should be interpreted in a consistent manner to give effect to all statutes. State ex rel Church v. Ariz. Corp. Commission, 94 Ariz. 107. 382 P.2d 222 (1962).

Therefore it is our opinion that the screening requirement is complied with by placing the commercial vehicle in the rear yard behind a fence that is a minimum 6 feet in height that would prevent the vehicle from being visible at ground level.

In regard to the parking of a vehicle as being in conflict with Article 14-5, this provision and the zoning code must be interpreted in a consistent manner. Many employers authorize a variety of employees to use their vehicles for commuting purposes, including specially equipped vehicles.[1] The use of such vehicles does not create a right to engage in the business of their employer at their residence.

[1]In fact, such use is recognized in the United States Internal Revenue Code by providing that the commuting benefit accrued by the employee in using specially equipped vehicles of their employer shall not be subject to taxation as income.

Therefore it would be our opinion that the parking of commercial vehicles behind a screen in compliance with Ordinance 92-20 is permitted, provided that the vehicle is used for commuting, non commercial purposes.

I trust that this answers your questions in this matter. If you should have any questions, please do not hesitate to contact me.

cc: Honorable Mayor and Council

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