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OPINION NO. 2011-02

TO: Roy Minter, Police Chief, Jay Davies, Neighborhood Services
Manager
FROM: Stephen M. Kemp, City Attorney
DATE: July 21, 2011
SUBJECT: Recreational Vehicles: Meaning of “loading and unloading”

QUESTION:

What is the meaning of the terms “loading and unloading” for purposes of Sections 14-110 -14-112 of the City Code pertaining to Recreational Vehicles.

OPINION:

The Peoria City Code provisions governing the parking of recreational vehicles provide:

Sec. 14-110. Parking; recreational vehicles; utility trailers; private property parking.

(a) Recreational vehicles and Utility trailers, as defined above, shall be allowed to be parked within the garage or carport in the single family residential zoning districts. Recreational vehicles and Utility trailers shall also be permitted to be parked within a side or rear yard when located within a single family residential zoning district and appropriately screened in accordance with the provisions of the zoning ordinance and section 14-111 of this code.

(b) Recreational vehicles located on properties zoned for single family residential uses may not be utilized for living purposes by any person.

(c) Properties located within a single family residential zoning district and used primarily for commercial agricultural purposes and boats anchored or docked on water shall be exempt from the regulations contained in sections 14-110 through 14-111 of this code.

(d) Recreational vehicles and Utility trailers used for a non-commercial purpose and located on properties zoned for single family residential uses may be parked in the front yard only when in the process of loading or unloading. There shall be a rebuttable presumption that parking in the front yard for a period in excess of twenty-four continuous hours is not for the purpose of loading and unloading.

(e) Utility trailers used for a commercial purpose shall not be parked in the front yard or upon any public right of way, street, alley or easement between the hours of 6:00 p.m. and 8:00 a.m. Notwithstanding the foregoing, such utility trailers that are the property of the state, a political subdivision of this state, the City, a public service corporation regulated by the Arizona Corporation Commission or a telecommunications corporation may be parked upon a public right of way, street, alley or easement for the purposes of street and utility repair.

(f) There shall be no limit on the number of Recreational vehicles or Utility trailers lawfully permitted on any parcel of land and where not otherwise prohibited.

(g) All Recreational vehicles and Utility trailers shall be maintained in good repair as required by this code and all parking areas shall be maintained in accordance with this code; zoning ordinances and the city's subdivision regulations as applicable.

(h) The regulations contained within this chapter are not intended to supersede any lawfully established covenants, conditions and restrictions relating to the parking of Recreational vehicles and Utility trailers nor shall the granting of any special permit supersede any lawfully established covenants, conditions and restrictions applicable to the subject property.

(i) For purposes of sections 14-107 through 14-113 of this code, the terms

(1) "Park, parked, parking" shall include attaching a utility trailer or other trailer to a motor vehicle for the purpose of towing.

(2) "Single family residential zoning district" shall include all residential zoning districts that currently or have previously permitted single family or two-family residential dwelling units.

You have inquired as to the meaning of the terms "loading and unloading" in this code section. The starting rule for statutory interpretation is that words will be construed in accordance with their ordinary and common meaning, unless they have acquired technical meaning or unless a definite meaning is apparent or indicated by the context of words. *In re First Magnus Financial Corp.*, 390 B.R. 667 (Bkruptcy, D. Ariz. 2008)

Merriam-Webster's Dictionary defines to "load" as: whatever is put on a person or pack animal to be carried; whatever is put in a ship or vehicle or airplane for conveyance; *especially*: a quantity of material assembled or packed as a shipping unit. Conversely, "unload" is defined as: to take off; to take the cargo from.

While it would be difficult to quantify every conceivable activity that could constitute loading or unloading of a recreational vehicle, such activities must fall within the confines of the above definition. In general, the principle to be applied is whether material is being added or removed from the vehicle necessary to its intended use as a recreational vehicle. The following activities would appear to fall within the definition:

1. Filling and Replacing Propane Tanks.
2. Stocking the vehicle with food, water and supplies necessary for its intended use.
3. Filling water tanks.
4. Flushing wastewater tanks into approved facilities.
5. Stocking the vehicle with camping related equipment such as charcoal, grilling utensils. Chairs, tables, etc.
6. Removal of trash or debris from the vehicle.

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7. For the purpose of charging batteries and providing utilities to the vehicle, connecting the vehicle to electricity while stocking and readying the vehicle for travel.

You have specifically inquired as to whether maintenance of a recreational vehicle constitutes loading or unloading. The answer is no. The legislation specifically uses the terms loading or unloading. *Navajo Nation v. U.S. Forest Service*, 535 F.3d 1058 (9th Cir 2008). We are limited to using the natural and obvious definition that can be discerned from the dictionary. Maintenance is distinctly different from loading or unloading. Activities such as changing the oil, adding fluids, replacing parts and checking tires, lights and equipment are not part of the obvious definition to load and unload. Absent the council amending the code provision to provide for a broader meaning, the natural and obvious definition shall apply.

Should you have any further questions, please do not hesitate to contact this office.