



City of Peoria

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OPINION NO. 2014-02

TO: Roy Minter, Chief of Police
FROM: Stephen M. Kemp, City Attorney 
DATE: December 18, 2014
SUBJECT: Definition of Commercial Vehicles

QUESTION: What is the applicability of the definitions of commercial vehicles contained in Title 28, Arizona Revised Statutes?

OPINION:

First, to what extent does the provisions of Title 28, Arizona Revised Statutes govern the City's interpretation of its code pertaining to commercial vehicles? Second, if such provisions are applicable, how do they apply to commercial vehicles under the Peoria City Code?

The answer to the first question is determined by the provisions of A.R.S. §§28-626-627. A.R.S. §28-626 preempts all local legislation pertaining to Chapters 4 and 5 of Title 28 (Driving Under the Influence and Penalties and Procedures for Vehicle Violations). This is an example of express preemption by the state. Express preemption means that the legislature has acted to preempt cities including charter cities on a matter that is not one of local concern. *Luhrs v. City of Phoenix*, 52 Ariz. 438, 83 P.2d 283 (1938).

A.R.S. § 28-627 delegates to local governments the authority to adopt traffic regulations pertaining to parking, speed and other matters of local concern. However, Title 28 Arizona Revised Statutes in total is an example of field preemption, where the legislature has comprehensively regulated the subject of motor vehicles, leaving only a few areas for local government to regulate. Such local regulation cannot conflict with state legislation that has appropriated the field. *Ryder Truck Rental, Inc. v. City of Phoenix*, 172 Ariz. 490, 838 P.2d 829 (1992). The legislature defined commercial vehicles for purposes of operation in A.R.S. §28-3001 which provides:

3. "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles that is used in commerce to transport passengers or property and that includes any of the following:

(a) A motor vehicle or combination of motor vehicles that has a gross combined weight rating of twenty-six thousand one or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than ten thousand pounds.

(b) A motor vehicle that has a gross vehicle weight rating of twenty-six thousand one or more pounds.

(c) A bus.

(d) A motor vehicle or combination of motor vehicles that is used in the transportation of materials found to be hazardous for the purposes of the hazardous materials transportation authorization act of 1994 (49 United States Code sections 5101 through 5128) and is required to be placarded under 49 Code of Federal Regulations section 172.504, as adopted by the department pursuant to chapter 14 of this title.

Both A.R.S. §28-601 and §28-3001 indicate a legislative intent to establish definitions for operation, registration and permits that were intended to preempt the field. Therefore, it's the opinion of this office that the definition of commercial vehicle provided in A.R.S. §28-3001 governs the definition of commercial vehicles subject to parking restrictions under Chapter 14 of the Peoria City Code.

Chapter 14 of the Peoria City Code contains definitions in Sec. 14-109; however, this provision does not define commercial vehicles. Commercial vehicles appear to be addressed in Section 14-107 pertaining to parking regulations. This section provides:

Sec. 14-107. Parking; motor vehicles used for commercial purposes; special parking provisions.

(a) It is unlawful to park a motor vehicle, utility trailer, hobby vehicle or any other trailer used for commercial purposes with any motor or engine operating for more than twenty (20) minutes in a twenty-four hour period commencing each day at 12:00 a.m., in any residential zoning district of the City, or within three hundred (300) feet of any occupied residence in a nonresidential area.

(b) Except as otherwise provided in this section, it is unlawful to park any motor vehicle used for commercial purposes upon any lot, parcel or property within the City, except on a lot with proper zoning and site plan approvals from the City for such parking.

- (c) No person shall stand or park a vehicle with a gross vehicle weight rating in excess of ten thousand (10,000) pounds and exceeding a one (1) ton chassis rating, or a tractor, semi-trailer, trailer, or bus on a street in a residential zone, or adjoining a residential zone, except during the process of loading or unloading such vehicle.
- (d) No person shall stand or park a tractor, semi-trailer, trailer, or bus, on any real property within a residential zoning district within the City.
- (e) No person shall stand or park a vehicle having: (i) a gross vehicle weight rating in excess of ten thousand (10,000) pounds or (ii) exceeding a one (1) ton chassis rating 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 within a side or rear yard that shall be screened by a minimum six foot high block wall, wood fence or gate. All screen walls, fences or gates shall be erected and maintained in conformance with provisions of the zoning ordinance.
- (f) It shall be unlawful to park or stand a commercial vehicle for the purposes of retail sales of food for human consumption from the vehicle on any parcel without permission of the property owner or person in lawful possession of such property or on any lot designated as a Park and Ride Lot by the City for use by the operators of motor vehicles as a parking area to facilitate car pooling and/or use of mass transit systems.
- (g) Notwithstanding the provisions of subsection (d) of this section, vehicles driven by employees of a public service corporation as defined in Title 40, Arizona Revised Statutes, a telecommunications provider as defined in Title 9, Arizona Revised Statutes, a cable communications provider as defined in this code or a special taxing district organized under Title 48, Arizona Revised Statutes or a political subdivision of this state may be parked on any real property within a residential zoning district.
- (h) Violation of this section shall constitute a civil traffic violation and the violator shall be subject to a civil sanction of not less than one hundred and fifty (\$150.00) dollars.

For purposes of subsections (a), (b) and (f) of Section 14-107, the City Code being silent on the definition of commercial vehicles and the state legislature having appropriated the field, the definition which must be used is contained in A.R.S. §28-3001. Subsections (c) and (e) appear to establish a separate

definition for commercial vehicles. However, the Arizona Legislature in Title 28 has established a statewide definition for commercial vehicles and appropriated the field. Such statewide definition is binding on a Charter City such as Peoria, *State v. Jaastad*, 43 Ariz. 458, 32 P.2d 799 (1934) Therefore, the definitions in subsections (c) and (e) conflict with the state law definition and are outside of the City's authority to impose. It is the opinion of this office that the definitions in subsections (c) and (e) are in violation of the Arizona Constitution, Art. 13, §2 pertaining to the authority of Charter Cities and therefore are invalid.

In answer to the second question, there is no preemption within Title 28, Arizona Revised Statutes on the regulation of parking of other types of vehicles, provided they are regulated based on its definitions in Title 28, and not defined by the City in a particular manner. For example, the City could elect to regulate those vehicles identified currently in Chapter 14 of the City Code, by defining them as non-commercial vehicles in accordance with the definitions contained in Title 28, Arizona Revised Statutes.

For purposes of statutory interpretation, the duty of a court or legal authority in interpreting the statute is to attempt to give meaning to each statutory clause. *State v. Garza Rodriguez*, 164 Ariz. 107, 791 P.2d 633 (1990). In this case, this requires a determination as to whether the prohibitions in subsections (c) and (e) can be given effect even though the standards contained in the subsections are invalid. It's the opinion of this office that the definition of commercial vehicles contained in A.R.S. §28-3001 should be used in place of the definitions contained in subsections (c) and (e) until such time as the code is revised.

In conclusion, it's the opinion of this office that the Arizona Legislature has comprehensively occupied the field of Motor Vehicle definitions and that the City of Peoria is preempted from adopting any different form of definition for regulating the parking of commercial vehicles as outlined in this opinion. If you have any questions, please contact this office.