

Fort Lauderdale
Jacksonville
Miami
Orlando
Tallahassee
Tampa
Washington, DC
West Palm Beach

One Southeast Third Avenue
SunTrust International Center
28th Floor
Miami, Florida 33131-1714
www.akerman.com
305 374 5600 *tel* 305 374 5095 *fax*

MEMORANDUM

Jennifer Cohen Glasser
305 982 5540
jennifer.glasser@akerman.com

TO: Elizabeth Hernandez, City Attorney
FROM: Jennifer Cohen Glasser, Esq.
CC: Michael Fertig, Esq.
DATE: August 25, 2005
SUBJECT: Proposed Truck Ordinances

As per our discussions, enclosed are two versions of the amendments to the truck ordinances of the City's Zoning Code, specifically § 8-11, § 8-12 and the relevant definitions. By way of overview, this memorandum outlines the proposed changes contained in the two versions. Version A and B are the same, with one major distinction. Version A contains a provision allowing pick-up trucks to be parked on residential property if the cargo box of the pickup truck is covered by a firm cover made specifically to cover cargo boxes. Version B, the more restrictive of the two proposals, does not include such a provision.

The significant proposed revisions are as follows:

1. Clarifies the definition of "Truck" by eliminating as part of its definition "any motor vehicle having space designed for and capable of carrying property, cargo, or bulk material and which space is not occupied by passenger seating." This prior portion of the definition of "truck" is being challenged in the current litigation as unconstitutionally vague and overbroad as it may include all vehicles (including private passenger automobiles) that have trunks.
2. Redefines the term "Commercial Vehicle" to include:
 - a. any vehicle designed, used or maintained for commercial transport;

- b. any vehicle displaying commercial markings, signs, logos etc.;
 - c. any vehicle weighing more than 8,500 pounds; and
 - d. any vehicle having unenclosed space (ie., cargo bed) designed for and capable of carrying property and which unenclosed space is not occupied by passenger seating
3. Adds limited exceptions to the prohibition on parking pickup trucks on residential property:
- a. vehicles, not being used or maintained as commercial vehicles, which are entirely enclosed on at least three sides by a carport or other structure so that the rear, driver and passenger sides are shielded from visibility;
 - b. pickup trucks, not being used or maintained as commercial vehicles, that have the truck's cargo box fully covered by a firm cover made specifically for the purpose of covering pickup truck cargo boxes. **THIS EXCEPTION IS IN PROPOSED VERSION A ONLY; VERSION B IS THE SAME AS VERSION A IN ALL OTHER RESPECTS.**
 - c. vehicles owned or operated by a physically impaired individual; and
 - d. passenger automobiles which require governmental identification, markings or insignias of a government agency

Version A is the more liberal of the two proposals in that it allows pickup trucks on driveways and other permitted areas of residential property as long as the pickup truck's cargo box is covered. Based on the current applicable law, this proposed version will likely be able to withstand constitutional challenges.

Version B is more restrictive in that a pickup truck may be parked at a residence only if it is entirely garaged or concealed from view on three sides by a carport or other permitted structure or hedge. The determination of the constitutionality of this proposal is more questionable given that in some areas of the City, particularly where multi-dwelling structures are common, it is not feasible to erect a carport or other structure to shield the vehicle from view. It is conceivable that a court would therefore not view this proposed ordinance as materially different than the current version of the ordinance.

VERSION A

Article 2, Definitions

Carpport. A roofed structure not more than seventy-five (75%) percent enclosed by walls and attached to the main building for the purpose of providing shelter for one or more motor vehicles. (Sec. 2-27)

Trailer. Every vehicle without motor power, designed for carrying persons or property on its own structure and for being drawn by a motor vehicle. (Sec. 2-125)

Truck. Any motor vehicle designed, used or maintained for transporting or delivering property or material used in trade or commerce in general. ~~Trucks shall include any motor vehicle having space designed for and capable of carrying property, cargo, or bulk material and which space is not occupied by passenger seating.~~ (2536) (Sec. 2-128)

Truck, pickup. A light truck with an open body and low sides or no sides.

Vehicle. Every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway or street, except devices moved by human power. (Sec. 2-134)

~~Vehicle, commercial.~~ ~~Any vehicle designed, used or maintained, as a means of transportation on land of people, goods or things used in trade, services, or commerce in general. For the purposes of this ordinance, buses, vans and other vehicles seating more than nine (9) persons used for transportation of people shall be considered commercial vehicles.~~ (2536) (Sec. 2-135)

(1) Any vehicle designed, used or maintained for the transportation of persons, goods, or things used in trade, services or commerce in general. For the purposes of this ordinance, buses, vans and other vehicles seating more than nine (9) persons used for transportation of people shall be considered commercial vehicles.

(2) Any vehicle which bears, displays, or has affixed to it any marking, sign, lettering, logo, picture, symbol, number, or the like, whether alone, or in combination, which identifies or advertises a business or similar commercial venture or use.

(3) Any vehicle with a curb weight (vehicle only) exceeding 8,500 pounds.

(4) Any vehicle having unenclosed space designed for and capable of carrying property, cargo, or bulk material and which unenclosed space is not occupied by passenger seating.

Vehicle, motor. Every vehicle which is selfpropelled. (Sec. 2-136)

Vehicle, recreational. Any vehicle selfpropelled or capable of being towed and primarily designed, constructed or converted to provide recreational uses, or to provide temporary living quarters for camping, or recreational travel. The following shall be included as recreational vehicles, but not to the exclusion of any other types not mentioned; trailers; trailer coaches; camping trailers; and full-tent trailers; motor homes; pickup (slide-in) camper and mini-motor homes. Any van designed for and containing seating for the transportation of not more than nine (9) persons and containing rear and side windows shall not be considered a recreational vehicle. (2536) (Sec. 2-137)

* * *

Sec. 8-11 - Parking in residential areas.

(a) It shall be unlawful for any person to park any vehicle displaying advertising signs or any pickup truck, trailer, commercial vehicle, or recreational vehicle, in or upon any property, public or private, in any area of the city which is zoned residential. This prohibition, however shall not apply in the following cases: (2536)

1. Vehicles which are entirely enclosed within the confines of an enclosed garage.

2. Vehicles, not being used or maintained as commercial vehicles, which are entirely enclosed on at least three sides by a carport or other structure (including walls, fences or hedges of more than four feet) so that the rear, driver and passenger sides of the vehicle are shielded from visibility from any adjacent street. Said carport or other structure shall be permitted only when placed in accordance with all applicable building and zoning codes.

3. Pickup trucks, not being used or maintained as commercial vehicles, that have the truck's cargo box fully covered by a rigid cover made specifically for the purpose of covering pickup truck cargo boxes. Such cargo box cover must be no higher than the cargo box walls and does not include tarps.

4. Pick-up trucks which contain no property, cargo or other material in the cargo box.

~~2.~~ 5. Vehicles used by licensed contractors or service establishments while actually doing work in such residential areas between the hours of 7:30 a.m. to 6:00 p.m. excluding Sundays and holidays, provided, however, that such vehicles shall contain written identification on both sides of the vehicle clearly indicating the name of the contractor or service establishment. Such identification shall be in conformance with the standards set forth in Section 8A-276(b), Commercial Vehicle Identification, of the Code of Metropolitan Dade County, Florida.

~~3.~~ 6. Loading or unloading of trucks, trailers or commercial vehicles provided that such loading or unloading takes no more than two (2) hours, and is not done between the hours of 7:00 p.m. of one day and 7:00 a.m. of the next day.

~~4.~~ 7. Automobiles carrying advertising signs on the top of such automobiles dealing with the candidacy of individuals for elected office. This exemption, however, shall cease seven (7) days after the date of the election in which the person was finally voted upon.

~~5.~~ 8. Automobiles carrying advertising signs, advertising propositions to be submitted and voted upon by the people. This exemption, however, shall cease seven (7) days after the date of the election in which the proposition advertised was finally voted upon.

~~6.~~ 9. The loading or unloading of recreational vehicles as provided for under Section 8-11 herein.

~~7.~~ 10. Mobile cranes and other heavy equipment used during building construction.

11. Vehicles owned or operated by a physically impaired individual when a medical doctor has certified that the vehicle is necessary due to physical impairment.

12. Passenger automobiles which require governmental identification, markings or insignias of a local, state or federal government agency.

(b) The Building and Zoning Director and its designees shall be charged with the responsibility of determining compliance with the regulations governing the

parking of such ~~trucks~~, trailers, commercial vehicles and recreational vehicles in residential areas as provided herein, however, in case of dispute, direct application may be made to the City Commission.

**Sec. 8-12 - ~~Trucks, t~~Trailers, commercial vehicles, and recreational vehicles—
Parking upon streets and public places.**

Except as provided for herein no ~~trucks~~, trailers, commercial vehicles, or recreational vehicles, shall be parked upon the streets or other public places of the City between the hours of 7:00 p.m. on one day and 7:00 a.m. of the next day. This prohibition is in addition to the ~~total~~ prohibition covering residential areas dealt with in Section 8-11 hereof. (2536) The prohibition of this Section shall not apply to pickup trucks which are not being used or maintained as commercial vehicles as defined in this Code.

VERSION B

Article 2, Definitions

Carpport. A roofed structure not more than seventy-five (75%) percent enclosed by walls and attached to the main building for the purpose of providing shelter for one or more motor vehicles. (Sec. 2-27)

Trailer. Every vehicle without motor power, designed for carrying persons or property on its own structure and for being drawn by a motor vehicle. (Sec. 2-125)

Truck. Any motor vehicle designed, used or maintained for transporting or delivering property or material used in trade or commerce in general. ~~Trucks shall include any motor vehicle having space designed for and capable of carrying property, cargo, or bulk material and which space is not occupied by passenger seating.~~ (2536) (Sec. 2-128)

Truck, pickup. A light truck with an open body and low sides or no sides.

Vehicle. Every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway or street, except devices moved by human power. (Sec. 2-134)

~~Vehicle, commercial.~~ ~~Any vehicle designed, used or maintained, as a means of transportation on land of people, goods or things used in trade, services, or commerce in general. For the purposes of this ordinance, buses, vans and other vehicles seating more than nine (9) persons used for transportation of people shall be considered commercial vehicles.~~ (2536) (Sec. 2-135)

(1) Any vehicle designed, used or maintained for the transportation of persons, goods, or things used in trade, services or commerce in general. For the purposes of this ordinance, buses, vans and other vehicles seating more than nine (9) persons used for transportation of people shall be considered commercial vehicles.

(2) Any vehicle which bears, displays, or has affixed to it any marking, sign, lettering, logo, picture, symbol, number, or the like, whether alone, or in combination, which identifies or advertises a business or similar commercial venture or use.

(3) Any vehicle with a curb weight (vehicle only) exceeding 8,500 pounds.

(4) Any vehicle having unenclosed space designed for and capable of carrying property, cargo, or bulk material and which unenclosed space is not occupied by passenger seating.

Vehicle, motor. Every vehicle which is selfpropelled. (Sec. 2-136)

Vehicle, recreational. Any vehicle selfpropelled or capable of being towed and primarily designed, constructed or converted to provide recreational uses, or to provide temporary living quarters for camping, or recreational travel. The following shall be included as recreational vehicles, but not to the exclusion of any other types not mentioned; trailers; trailer coaches; camping trailers; and full-tent trailers; motor homes; pickup (slide-in) camper and mini-motor homes. Any van designed for and containing seating for the transportation of not more than nine (9) persons and containing rear and side windows shall not be considered a recreational vehicle. (2536) (Sec. 2-137)

* * *

Sec. 8-11 - Parking in residential areas.

(a) It shall be unlawful for any person to park any vehicle displaying advertising signs or any pickup truck, trailer, commercial vehicle, or recreational vehicle, in or upon any property, public or private, in any area of the city which is zoned residential. This prohibition, however shall not apply in the following cases: (2536)

1. Vehicles which are entirely enclosed within the confines of an enclosed garage.

2. Vehicles, not being used or maintained as commercial vehicles, which are entirely enclosed on at least three sides by a carport or other structure (including walls, fences or hedges of more than four feet) so that the rear, driver and passenger sides of the vehicle are shielded from visibility from any adjacent street. Said carport or other structure shall be permitted only when placed in accordance with all applicable building and zoning codes.

~~2.~~ 3. Vehicles used by licensed contractors or service establishments while actually doing work in such residential areas between the hours of 7:30 a.m. to 6:00 p.m. excluding Sundays and holidays, provided, however, that such vehicles shall contain written identification on both sides of the vehicle clearly indicating the name of the contractor or service establishment. Such identification shall be in

conformance with the standards set forth in Section 8A-276(b), Commercial Vehicle Identification, of the Code of Metropolitan Dade County, Florida.

~~3.~~ 4. Loading or unloading of trucks, trailers or commercial vehicles provided that such loading or unloading takes no more than two (2) hours, and is not done between the hours of 7:00 p.m. of one day and 7:00 a.m. of the next day.

~~4.~~ 5. Automobiles carrying advertising signs on the top of such automobiles dealing with the candidacy of individuals for elected office. This exemption, however, shall cease seven (7) days after the date of the election in which the person was finally voted upon.

~~5.~~ 6. Automobiles carrying advertising signs, advertising propositions to be submitted and voted upon by the people. This exemption, however, shall cease seven (7) days after the date of the election in which the proposition advertised was finally voted upon.

~~6.~~ 7. The loading or unloading of recreational vehicles as provided for under Section 8-11 herein.

~~7.~~ 8. Mobile cranes and other heavy equipment used during building construction.

9. Vehicles owned or operated by a physically impaired individual when a medical doctor has certified that the vehicle is necessary due to physical impairment.

10. Passenger automobiles which require governmental identification, markings or insignias of a local, state or federal government agency.

(b) The Building and Zoning Director and its designees shall be charged with the responsibility of determining compliance with the regulations governing the parking of such ~~trucks~~, trailers, commercial vehicles and recreational vehicles in residential areas as provided herein, however, in case of dispute, direct application may be made to the City Commission.

**Sec. 8-12 - ~~Trucks, t~~Trailers, commercial vehicles, and recreational vehicles—
Parking upon streets and public places.**

Except as provided for herein no ~~trucks~~, trailers, commercial vehicles, or recreational vehicles, shall be parked upon the streets or other public places of the

City between the hours of 7:00 p.m. on one day and 7:00 a.m. of the next day. This prohibition is in addition to the ~~total~~ prohibition covering residential areas dealt with in Section 8-11 hereof. (2536) The prohibition of this Section shall not apply to pickup trucks which are not being used or maintained as commercial vehicles as defined in this Code.