

Notes on the Working Draft of Proposed Municipal Code §17.09, the Outdoor Storage Ordinance.

Summary:

- Only applies to residential zones, and does not apply to properties under construction.
- Outdoor storage is allowed only in rear yards, and only if it is screened.
 - *In general, you can store anything you want, as long as it's in the back yard and screened.*
 - *But still limited to 6 feet in height, and cannot be large commercial vehicles, large RVs, semi trailers, shipping containers, hazardous materials, or materials used in connection with a business.*
- But there are exceptions for common items.
 - *The concept is to prohibit things that are truly unsightly and have an impact on others' use and enjoyment of their properties, but not to prohibit things that are unsightly only to unreasonable, hyper-sensitive persons.*
 - *There are different exceptions for street yards, side yards and rear yards.*
- Under no circumstances (no matter which yard, no matter whether screened or not) are the following allowed: Class A RVs, commercial vehicles greater than 10,000 pounds GVWR, hazardous materials, materials used in connection with a business (unless permitted as a conditional use by Plan Commission), semi trailers, and shipping containers.
- But, regardless of all these restrictions, anything is allowed for a maximum of 30 days in a one-year period.
 - *Neighbors can tolerate just about anything for a short period of time, and people have to have reasonable use of their property for short-term matters.*
 - *This exception is still subject to all other applicable laws, e.g., nuisances, fire and building codes, vehicle rules, etc.*
- There are exceptions for things that implicate the First Amendment – signs, religious symbols, etc.

Policy Considerations.

This ordinance is aimed at the storage of items that arises to the level of having a negative impact on neighboring citizens and properties. It is based on the same principles that zoning ordinances are based on, and it could just as easily have gone into Chapter 22. Chapter 17 is where the property-maintenance code currently sits, so this proposal is to create a new section in chapter 17. Because the existing property-maintenance ordinance contains many provisions beyond

outdoor storage, this proposal also includes breaking those other provisions out into their own separate code sections, so they can be found more easily in our Municipal Code.

The trick to analyzing this measure is balance. There has to be a balance struck between the rights of people to use their own private property as they want, and the rights of neighbors not to suffer loss of enjoyment or value of their properties as a result. The difficulty is that many of the complaints that we receive about people storing things on their property come from hyper-sensitive people whose demands are just plain unreasonable. It's very important that you not evaluate this proposed ordinance from the point of view of trying to eliminate all complaints from hyper-sensitive people. Instead, the ordinance should be evaluated from the point of view of a reasonable, objective person. There are a lot of cases in which someone disagrees with what their neighbors are doing on their property, but the solution is for them simply to look away and to mind their own business.

So, this proposed ordinance is full of opportunities to perform that balancing act. Remember that the general principle is that ordinances such as this one have to relate to a legitimate government purpose to protect the general health, safety, and welfare of the population. We don't want to prohibit uses that do not have an adverse effect on neighboring persons or properties, and we don't want to restrict private property rights unreasonably.

The draft is annotated in red to explain some policy choices and the opinions of different city departments that had input into the draft.

17.09 Outdoor Storage.

(1) **Definitions.** For purposes of this Section only, capitalized terms have the following meanings.

- (a) Building Materials means materials that will be incorporated into a structure or improvement to real estate, and includes landscaping materials, plants, and trees.
- (b) Enclosed Structure means a rigid structure that is permitted by Municipal Code Chapter 22, which is fully enclosed on all sides and has a full roof.
- (c) Hazardous Materials means, for purposes of this Section, any materials described in Wis. Stats. §291.05(1), (2) or (4); explosive or highly-flammable materials, except gasoline in an amount no greater than 5 gallons, LP or propane gas in UL-approved tanks no greater than 40 pounds in capacity; pesticides and herbicides, except in total quantities of no more than 5 gallons, in the original container and being stored and used in strict compliance with the manufacturer's instructions; and solvents and lubricants, except in total quantities of no more than 5 gallons, in the original container, and being stored and used in strict compliance with the manufacturer's instructions.

This definition was provided by the City's Fire Marshal.

- (d) Junk means worn-out or discarded material having little or no usefulness or practical value, the accumulation of which has an adverse effect on neighboring property values, health, safety, or general welfare, and includes construction debris.

This definition parallels the definition of "junk" in Mun. Code §12.07, the junk and abandoned vehicle ordinance.

- (e) Ornamental Items means decorative items or artwork that is not Junk and would be perceived by a reasonable person of ordinary sensibility and sensitivity as ornamental, such as statues, sculptures, fountains, gazing balls, lamps, lighting, or birdbaths.

Alternatively, we could remove the subjective descriptions and specify items, but it could be a very long list, and could omit items.

- (f) Outdoors means outside of an Enclosed Structure, and includes areas within carports, lean-to roofs, portable garages, open-sided or open-ended tents, open-sided or open-ended shelters, open-sided or open-ended sheds, decks, porches, patios, gazebos, and other, similar areas open to external view.

- (g) Outdoor Storage means the placement Outdoors by any person of any item of Personal Property on a residential parcel, including roofs of buildings, and the Personal Property remaining in place on the residential parcel for a total of at least 30 consecutive days in any one-year period.

The inclusion of storage on roofs is in response to complaints that Andy Reiland received about someone in his district storing materials on the roof of a house.

Andy was the originator of the idea for this ordinance. Also, this section is where the “anything goes for 30 days” rule is.

- (h) Personal Property means any and all items of tangible personal property, but does not include signs regulated by Municipal Code Chapter 27, religious symbols, structures, improvements or fixtures to real estate, above-ground swimming pools, or any items for which a building permit is required.

This ordinance only applies to personal property, which means that it does not apply things that are fixed to real estate in such a way that they become fixtures to real estate. That could include things like sheds, basketball hoops, large sculptures, etc.

- (i) Rear Yard, Side Yard, and Street Yard are as defined in Municipal Code §22.05(202)-(205).
- (j) Screened means behind Screening when viewed from the street or adjacent properties while standing at ground level.

Items will still be considered “screened” if they are visible from second-story windows, drones, etc.

- (k) Screening means a Solid Fence as defined in Municipal Code §22.05(75), or evergreen vegetation, at least as tall as the items being stored and of sufficient density to block at least half of the view, year-round, of items being stored behind the Screening.

Blocking half the view could be tough to measure, but the point is that an item does not have to be 100% blocked from view in order for its storage not to be offensive to the public. For example, a row of arbor vitae, of adequate height and planted so the gap between them is not greater than half the diameter of the vegetation, is probably sufficient.

- (l) Section means this Municipal Code §17.09.

- (2) **Applicability.** This Section is applicable only to properties within residential zoning districts, except for Rs-4. This Section does not apply to properties with buildings for which a building permit has been issued by the City and remains valid.

Community Development recommends changing this so that it applies to properties that are being used for residential purposes, because we do have residences within business-zoned areas. This presents a policy decision. If someone is residing within a business district, they are much less likely to object to outdoor storage in their neighborhood, and in fact, complaints we receive about junk and outdoor storage are almost exclusively from residential zones. City Attorney recommends not extending this ordinance any further than it has to go, because it will begin to infringe on outdoor storage rights of businesses that are legally operating in a business-zoned district.

(3) General Rules.

- (a)** Outdoor Storage of Personal Property is prohibited in Street Yards and Side Yards, and is allowed in Rear Yards only, except as specified in subsection (4).
- (b)** All Outdoor Storage must be Screened, except as specified in subsection (4).
- (c)** Outdoor Storage of the following items is prohibited in all cases and in all yards:
 - (i)** Vehicles, whether motorized or not, and trailers, greater than 22 feet in length, 10 feet in height, having more than 2 axles, or having more than 6 wheels.

This would still allow some semi tractors. The original draft specifically prohibited Class A RVs and commercial vehicles of greater than 10,000 pounds GVWR.

- (ii)** Hazardous Materials.
- (iii)** Materials and equipment used in connection with a business, unless permitted as a conditional use by the Plan Commission, in which case it is still subject to the other rules in this subsection (3). Licensed vehicles, otherwise allowable under this Section, bearing signs or other messages relating to a business do not constitute “materials and equipment” for purposes of this Section.
- (iv)** Semi trailers.
- (v)** Shipping containers, portable storage containers, and vehicles used solely for storage.

We do have instances of semi trailers and shipping containers being permanently situated on lots in residential areas in the city. Most of the provisions in this draft are in response to actual conditions that have been complained of in the City.

- (d)** Outdoor Storage may occupy a total area of no greater than 400 square feet, or 5% of total parcel area, whichever is greater.

The idea here is that in a residential area, an entire backyard should not be devoted to storage, there should be some limit as to the area. However, that is a policy determination for the Council to make. The alternatives are to allow unlimited area in back yards, as long as it's screened in compliance with this section, or to choose some other figures. 400 square feet is a 20-foot by 20-foot area, and is 5% of an 8000-square-foot lot. For reference, a typical 75 x 150 lot is 11,250 square feet, and 5% of that is 562.5 square feet, or a roughly 24-foot-square area.

- (e)** Outdoor Storage is prohibited in primary environmental corridors regardless of whether the area is in the Rear Yard or not.

- (f) Outdoor Storage is allowed only of items that are owned by full-time residents of the property on which the Outdoor Storage is taking place.

This is in response to actual situations in the City, where landlords use their rental properties as storage yards for their material and junk, but they do not reside there. In a residential area, it's inappropriate for a property to be used as a storage yard for other properties. Community Development is concerned that this provision will be unenforceable because they will have no way of knowing who owns the items, but there will be cases where a tenant will say, "Yeah, all that junk belongs to the landlord, who doesn't live here," so it will be enforceable in some cases. In many cases the materials being stored will also be "materials and equipment used in connection with a business," prohibited by another subsection.

- (g) Outdoor Storage of dirt, topsoil, sand, gravel, crushed rock, mulch, or other similar materials, must have appropriate protection against erosion by rain or wind so that it does not leave the property on which it is located, such as tarps, silt fences, or ground cover, as necessary.

Community Development recommended deletion of this subsection. City Attorney believes this goes directly to the nuisance aspect of outdoor storage, and bears on general welfare.

- (h) No individual or stacked items being stored may be higher than six feet from the ground.

- (i) Regardless of any provision in this Section, no items may be placed Outdoors on any property that would constitute a Public Nuisance as defined in Municipal Code Chapter 12.

- (4) **Exceptions.** The following items are excepted from the General Rules of subsection (3), as stated:

- (a) **Permitted in Any Yard without Screening.** The following items may be stored Outdoors in any yard without Screening, but only in quantities usual and customary for residential uses:

- (i) Ornamental Items.

- (ii) Items that are designed for use in residential yards, such as grills, smokers, lawn furniture, lawn ornaments, hoses and hose reels, flower pots, bird feeders, and bird baths; and are being kept on the property for their intended uses.

- (iii) Garbage cans and recycling bins.

- (iv) Games, sport and recreational items, such as basketball hoops, soccer goals, beanbag games, trampolines, and badminton nets.

- (v) Children's play items, such as swing sets, pools, sand boxes, and jungle gyms.

- (vi) Outdoor Fireplaces, as defined in Municipal Code §21.04(3)(b).
- (vii) Building Materials, including roofing materials placed on roofs, for no longer than 30 days.

There are undoubtedly other items that can be included here and in the following subsections. We don't want to prohibit typical, usual, customary, and reasonable items in yards, we only want to prohibit items that have an actual, adverse impact on neighboring persons and properties, without infringing on people's right to use their private property in ways that don't affect others.

(b) Permitted in Side and Rear Yards without Screening. The following items may be stored Outdoors in Side Yards and Rear Yards without Screening:

- (i) Lawn and garden tools being kept for actual use on the property, such as wheelbarrows, carts, ladders, shovels, and rakes, not to exceed a reasonable number for ordinary and customary use in a residential setting.
- (ii) Small, consumer-grade power equipment being kept for actual use on the property, such as lawnmowers, roto-tillers, generators, pressure washers, etc., not to exceed a reasonable number for ordinary and customary use in a residential setting.
- (iii) Small watercraft not greater than 18 feet in length and not requiring a trailer, such as canoes and kayaks, not exceeding five in number.
- (iv) Hot tubs, provided they are functional, operable, and maintained in a good state of repair and sanitary condition.
- (v) Firewood.

(c) Permitted on Paved Driveways and Paved Parking Areas without Screening. The following items may be stored Outdoors in paved driveways and paved parking areas without Screening:

- (i) Vehicles of less than 22 feet in length and 10 feet in height, having no more than 2 axles, or having no more than 6 wheels.
- (ii) Boats on trailers, of no more than 5,000 total pounds.

This will prohibit the parking of many commercial vehicles, semi tractors, RVs, and boats in driveways. This is, again, a policy decision where a line is drawn, and there will be some citizens that will be unhappy with the result. Just as the City prohibits keeping cattle in back yards, or performing industrial processes in residential districts (to name just two of many such prohibitions), there are certain vehicles that may just be too large to store in a residential driveway.

- (d) **Junk Being Held for Disposal.** Outdoor Storage of Junk that is being held for disposal is allowed in any yard for a maximum of 72 hours if not in a container, or 90 days if in a dumpster or similar waste-hauling container. Regardless of the foregoing, dumpsters or other waste-hauling containers must be removed as soon as they are full, and may not remain on a property for more than 90 days in any event.
- (e) **Items Otherwise Permitted.** Any item that is being stored in compliance with an express provision of the Municipal Code or of a permit issued pursuant to the Municipal Code.
- (5) **Compliance with Other Code Provisions.** All items allowed to be stored Outdoors pursuant to this Section, and their storage and use, must also comply with all other applicable ordinances, codes, statutes, and regulations. This Section does not override any other provision of the Municipal Code.
- (6) **Penalty.** Violations of this Section shall result in the imposition of the penalties provided in Municipal Code §25.05.