



OFFICE OF THE COUNTY ATTORNEY

Douglas M. Duncan  
County Executive

Charles W. Thompson, Jr.  
County Attorney

**MEMORANDUM**

TO: Albert J. Genetti, Jr., Director  
Department of Public Works & Transportation

VIA: Charles W. Thompson, Jr. *Charles*  
County Attorney

FROM: Eileen T. Basaman *ETB*  
Assistant County Attorney

DATE: October 6, 2000

RE: Interpretation of Code Section 31-16

You have requested our opinion on whether or not §31-16 of the Montgomery County Code (1994), as amended, prohibits long term parking of oversize vehicles, particularly large Recreational Vehicles ("RVs") and boat trailers on county roads adjacent to apartment complexes and townhouse communities.

**Conclusion**

Section 31-16 of the County Code prohibits long term parking on public streets in certain circumstances. However, the Section does not prohibit the parking of vehicles based on the size of the vehicle on the public streets in the County adjacent to the property lines of the home of a vehicle owner, unless prohibited by other sections of the Code.

**Discussion**

Chapter 31 of the Code grants authority to limit parking on public streets for safety reasons, and to otherwise maintain the orderly use of public streets by the public. For example, under the Code as currently written, the County has attempted to make the streets safer by prohibiting parking within 35 feet of intersections<sup>1</sup>; limiting parking during snow and ice

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<sup>1</sup>Section 31-17.

emergencies<sup>2</sup>; and prohibiting parking generally in a manner that impedes traffic or threatens the public safety<sup>3</sup>. To promote the orderly use of the streets, the Code specifically prohibits parking in a manner that directly conflicts with the public's right to use the public ways.<sup>4</sup>

Still other limitations are imposed on parking to prohibit the appropriation of the street for private parking in a manner that both conflicts with the public's general right to use its streets and in conflict with surrounding land uses. The Code prohibits the parking of commercial vehicles and buses on public streets in residential areas and around certain institutional uses<sup>5</sup>; prohibits temporary, non-emergency parking or repair of vehicles in need of repair<sup>6</sup>; or, as previously noted, parking of motor vehicles for longer than 24 hours unless adjacent to the owner's home or unless prohibited by one of the above-cited sections that regulate safety and access.

The Code does not currently prohibit the parking of boats and trailers on public roads adjacent to the property lines of the owner of the boat or the trailer. As drafted the prohibition creates enforcement problems because those enforcing the prohibition are charged with ascertaining real property ownership and boundary lines (and tenancy in the case of apartment houses or single family rental units) as well as boat or trailer ownership prior to enforcing the prohibition.

The Code provides a method by which neighborhood parking can be restricted by status as a resident or guest of a resident. Section 31-48 of the Code provides a method by which communities can limit parking in their residential areas with the consent of a majority of the property owners in the community. These parking permit areas are currently used to promote the availability of onstreet parking for residents of the community by limiting parking in neighborhoods directly impacted by generators of large numbers of users of parking such as Metro or schools to those having valid parking permits.

At least one neighboring jurisdiction has already expanded its similar parking permit program to provide residents with the means of limiting the parking of boats, trailers, and oversized recreational vehicles on a community by community basis. In August, Fairfax County passed an ordinance which permits a supermajority of the residents of a neighborhood to petition the Board of Supervisors to create a parking area that restricts the parking of recreational and

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<sup>2</sup>Sections 31-6 and 31-13.

<sup>3</sup>Section 31-8.

<sup>4</sup>Section 31-20.

<sup>5</sup>Section 31-14 prohibits the parking of commercial vehicles and buses on public roads abutting private residences or apartments, churches, schools, hospitals, or playgrounds except when the vehicle is unloading passengers or cargo, when the operator is at work on the premises, or when the vehicle is temporarily and involuntarily parked during an emergency.

<sup>6</sup>Section 31-15.

oversized vehicles on the streets in the area. A copy of the enacted ordinance is attached.<sup>7</sup> According to Michael Long, Esq. of the Fairfax County Attorney's Office, those appearing at the hearing on the ordinance in August 2000 overwhelmingly supported it. Although Fairfax County has not yet received any petitions to create a recreational vehicle restricted parking area, there are a couple of petition drives underway and the County Attorney's Office has received an inquiry from the Town of Herndon about adopting similar legislation.

If the Fairfax County approach is considered, the fiscal impact of the law will have to be carefully examined. Although the County now has some experience with residential parking areas and enforcement in those areas, restricting parking of oversized vehicles on public streets may introduce additional fiscal impacts not previously anticipated that must be carefully considered.

Another way of restricting long term parking of recreational vehicles on public streets would be to amend the Code to specifically prohibit the parking of oversized vehicles based either on gross vehicle weight or number of axles either on all public streets or on certain classifications of streets or roads due to safety concerns. These restrictions would not be limited by housing type, but would be based on safety concerns related to vehicle size and road dimensions.

Any restriction other than the general restriction that vehicles must be parked adjacent to the owner's property if they are parked for periods of time in excess of 24 hours will necessitate a legislative change with full public input. The safety and traffic flow considerations underlying any such proposed legislative change should be clearly stated in the proposed legislation, similar to the statement of purpose contained in the current parking permit statute, §31-48 of the Code.

cc: Honorable Nancy Dacek, Council Member, w/attachments

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<sup>7</sup>Virginia is a "Dillon Rule" state, and required specific authority from the State Legislature to enact the parking restriction law. Montgomery County is a Charter Home Rule jurisdiction, and does not require a change in the State Law to regulate parking in the County.

## VIRGINIA ACTS OF ASSEMBLY – 2000 SESSION

### CHAPTER 270

*An Act to amend the Code of Virginia by adding a section numbered 46.2-1222.1, relating to regulation of parking of certain vehicles by certain counties.*

[H 1466]

Approved April 2, 2000

**Be it enacted by the General Assembly of Virginia:**

**1. That the Code of Virginia is amended by adding a section numbered 46.2-1222.1 as follows:**

*§ 46.2-1222.1. Regulation or prohibition of parking of certain vehicles in certain counties.*

*Any county operating under the urban county executive form of government may by ordinance regulate or prohibit the parking on any public highway in the county of any or all of the following: (i) watercraft; (ii) boat trailers; (iii) motor homes, as defined in § 46.2-100, and (iv) camping trailers, as defined in § 46.2-100.*

1                   **ORDINANCE TO ADD A NEW ARTICLE 5B TO CHAPTER 82 OF THE**  
 2 **FAIRFAX COUNTY CODE RELATING TO THE PROHIBITION OF PARKING**  
 3 **WATERCRAFT, BOAT TRAILERS, MOTOR HOMES, AND CAMPING**  
 4 **TRAILERS ON CERTAIN PUBLIC HIGHWAYS**

5  
 6  
 7                   As Adopted August 7, 2000

8  
 9  
 10 AN ORDINANCE to amend the Fairfax County Code by adding a new article numbered  
 11 5B in Chapter 82 (Motor Vehicles and Traffic), relating to the prohibition of  
 12 parking watercraft, boat trailers, motor homes, and camping trailers on certain  
 13 public highways.

14  
 15 Be it ordained by the Board of Supervisors of Fairfax County:

16  
 17 1. That the Fairfax County Code is amended by adding a new article numbered 5B in  
 18 Chapter 82 (Motor Vehicles and Traffic) as follows:

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 20  
 21                   *Article 5B*

22  
 23                   *Prohibition Against Parking Watercraft, Boat Trailers, Motor Homes, and Camping*  
 24                   *Trailers in Certain Areas*

25  
 26 *Section 82-5B-1. Definitions.*

27                   *The following words and phrases when used in this Article shall have the*  
 28 *meanings ascribed to them in this Section, except in those instances where the context*  
 29 *clearly indicates a different meaning:*

30                   *“Block” means that land abutting on one side of a street, extending to the rear lot*  
 31 *lines of lots fronting on said street, and for parcels of land extending through to another*  
 32 *street, to a line midway between the two streets and lying between the two nearest*  
 33 *intersecting and intercepting streets or between the nearest intersecting or intercepting*  
 34 *street and the boundary of any railroad right-of-way, park, school ground or*  
 35 *unsubdivided acreage or center line of any drainage channel thirty feet or more in width.*

36                   *“Boat trailer” means any trailer that is designed to be drawn by a motor vehicle*  
 37 *on a public highway and to carry one or more watercraft.*

38                   *“Camping trailers” has the meaning set forth in Virginia Code § 46.2-100.*

1           *"Director" means the Director of the Fairfax County Department of*  
2 *Transportation or the designated agent of that Director.*

3           *"Motor homes" has the meaning set forth in Virginia Code § 46.2-100.*

4           *"Residential area" means that side of any street, road or highway adjacent to*  
5 *property used exclusively as a residence or contained in any one of the residential (R)*  
6 *districts set forth in the Zoning Ordinance, Chapter 112 of this Code.*

7           *"Restricted Parking District" means any district established by the Board of*  
8 *Supervisors pursuant to this Article for the purpose of restricting the parking of*  
9 *watercraft, boat trailers, motor homes, and camping trailers.*

10           *"Watercraft" means any vessel used or capable of being used for navigation or*  
11 *floatation on or through the water, but the term "watercraft" does not include any vessel*  
12 *that has been licensed to operate on public highways as a motor vehicle.*

13  
14 *Section 82-5B-2.       Restricted Parking District designation; exemption.*

15           A.       *Restricted Parking Districts prohibiting or restricting the parking of*  
16 *watercraft, boat trailers, motor homes, and camping trailers may be created by the Board*  
17 *of Supervisors in accordance with the provisions of this Article. Any such Districts shall*  
18 *be adopted by ordinance, and violations of such ordinances shall be punishable as*  
19 *provided in Section 82-5B-7. Any such Districts, including the particular prohibitions or*  
20 *restrictions within each particular District, shall be set forth in Appendix M of this Code,*  
21 *and any such districts shall be identified by appropriate signage as described by Section*  
22 *82-5B-6.*

23           B.       *No such Restricted Parking District shall apply to the parking of*  
24 *watercraft, boat trailers, or motor homes that are temporarily parked on a public street*  
25 *within any such District for use by federal, state, or local public safety agencies to*  
26 *provide emergency services.*

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1 *Section 82-5B-3. Criteria for the establishment or modification of Restricted*  
2 *Parking Districts.*

3 *A. All requests for the creation of a Restricted Parking District or the*  
4 *modification of an existing District that does not involve the changing of the boundaries*  
5 *shall be made in the form of a petition to the Board of Supervisors. All such petitions*  
6 *shall meet the following criteria:*

7 *(1) Any such petition shall state: (i) whether the petitioners seek to prohibit the*  
8 *parking of watercraft, boat trailers, motor homes and/or camping trailers; and (ii)*  
9 *whether the parking of any such devices should be restricted to a particular time of the*  
10 *day or week;*

11 *(2) Any such petition shall legibly state the names of each petitioner and the*  
12 *address, telephone number, and signature of each petitioner shall accompany each*  
13 *name;*

14 *(3) Any such petition shall contain the names and signatures of petitioners who*  
15 *represent at least seventy-five percent of the addresses or other real property within the*  
16 *proposed District;*

17 *(4) Any such petition shall include an area in which seventy-five percent of the*  
18 *land abutting each block within the proposed District is zoned, planned, or developed as*  
19 *a residential area; and*

20 *(5) The proposed District must contain the lesser of (i) a minimum of five blocks*  
21 *of both sides of the street (10 block faces) or (ii) any number of blocks that front on a*  
22 *minimum of 5,000 linear feet of street as measured by the centerline of each street within*  
23 *the proposed District.*

24 *B. All requests for the expansion or the contraction of the boundaries of an*  
25 *existing Restricted Parking District shall be made in the form of a petition to the Board.*  
26 *All such petitions shall meet the following criteria:*

27 *(1) Any such petition shall legibly state the names of each petitioner, and the*  
28 *address, telephone number, and signature of each petitioner shall accompany each*  
29 *name;*

1           (2) Any such petition shall contain the names and signatures of petitioners who  
2 represent at least seventy-five percent of the addresses or other real property within the  
3 proposed District; and

4           (3) Any such petition shall include an area in which seventy-five percent of the  
5 land abutting each block within the proposed District expansion is zoned, planned, or  
6 developed as a residential area.

7           C. All requests for the abolition of an existing Restricted Parking District shall  
8 be made in the form of a petition to the Board. All such petitions shall meet the criteria  
9 set forth in subsection A of this Section, mutatis mutandis.

10          D. A nonrefundable application fee shall accompany each request for the  
11 establishment, modification, or abolition of a Restricted Parking District. The  
12 application fee for any petition submitted in accordance with this Section shall be ten  
13 dollars for each property address within the proposed District.

14          E. The Board reserves the authority to approve, amend, or deny any petition for  
15 the creation, modification, or abolition of any Restricted Parking District, and the Board  
16 reserves the authority to waive the requirements set forth in the Section concerning the  
17 application fee and/or the size of a proposed District.

18  
19          Section 82-5B-4.       Submission requirements and procedures for the establishment  
20 of Restricted Parking Districts.

21          A. Every petition shall be submitted to the Director on forms provided by the  
22 County. Upon receipt of any such petition, the Director shall determine whether the  
23 petition meets the criteria set forth in Section 82-5B-3. If the petition does not meet those  
24 criteria, the Director shall return the petition to the petitioners. If any such petition  
25 meets the criteria, then the County Executive shall advise the Board of Supervisors of the  
26 petition. If the Board decides to consider the petition, then the petition will be considered  
27 as a proposed ordinance in accordance with the following procedure:

28               (1) A public notice of the proposed ordinance shall be published in a local  
29 newspaper having general circulation within the County in accordance with Virginia  
30 Code § 15.2-1427.



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1           (2) *In addition to the notice specified in Paragraph (1) above, the Director*  
2 *shall cause the posting of notice of the proposed ordinance. Any such notice shall be*  
3 *removed no later than seven days after the conclusion of the last hearing to which they*  
4 *pertain. Any such notice shall be posted at reasonable intervals along every street within*  
5 *the proposed District or along every street within the area proposed to be added or*  
6 *removed from an existing District. Any such notice shall contain the date, location and*  
7 *time of the public hearing, a description of the application, and such other information as*  
8 *may be necessary to provide adequate identification of the application, and additionally,*  
9 *where further information on the application may be obtained. With the permission of*  
10 *the owner, said notice may be placed on private property.*

11           (3) *The County shall send written notice to all owners of real property within*  
12 *the proposed District and in the areas adjacent thereto. In the areas adjacent thereto,*  
13 *notice shall be sent to the owners of a minimum of twenty-five different properties. Such*  
14 *written notices shall set the date, time, place, and subject matter of the hearing and shall*  
15 *be sent by first-class mail, postmarked at least fourteen days before the day of the*  
16 *hearing, to the last-known address of the owners as shown on the current real estate*  
17 *assessment book.*

18  
19 *Section 82-5B-5. Adoption and effective date.*

20           *Upon approval by the Board of Supervisors of a Restricted Parking District or of*  
21 *a modification to an existing District, the prohibitions or restrictions of the District or the*  
22 *modifications to the requirements of any such District shall become effective following*  
23 *the placement of signs designating the prohibitions or restrictions on the streets within*  
24 *the District.*

25  
26 *Section 82-5B-6. Signs.*

27           *All signs to designate a Restricted Parking District shall be erected by the County*  
28 *and shall be in conformance with the applicable Virginia Department of Transportation*  
29 *regulations and shall be of such design and character as to readily inform the operators*  
30 *of vehicles in Restricted Parking Districts of the existence, nature, and requirements of*

1 *the regulations pertaining to the particular District. Signs shall include at least the*  
2 *following information:*

- 3 (a) *Description of the restriction or prohibition;*
- 4 (b) *Time of day the restriction or prohibition is applicable, if not at all hours;*
- 5 *and*
- 6 (c) *The days of the week applicable, if not every day.*

7

8 *Section 82-5B-7. Enforcement and penalties.*

9 *A. It shall be unlawful for any person to park a watercraft, boat trailer, motor*  
10 *home, or camping trailer in violation of any ordinance that establishes a Restricted*  
11 *Parking District. Enforcement of Restricted Parking District requirements shall be under*  
12 *the jurisdiction of the Fairfax County Police Department, and law enforcement officers of*  
13 *that Department shall issue citations against those persons who violate the provisions of*  
14 *this Article or the provisions of Appendix M. Any person convicted of violating any*  
15 *provision of this Article or Appendix M shall be subject to a fine of twenty-five dollars.*  
16 *Vehicles parked in violation of these provisions may be towed at the owner's expense.*

17 *B. The Director of the Department of Finance shall collect and account for all*  
18 *uncontested payments of parking citation penalties under this Article; and any contest by*  
19 *any person of any parking citation shall be certified by said Director in writing, on an*  
20 *appropriate form, to the Fairfax County General District Court. The Director of the*  
21 *Department of Finance shall cause complaints, summons, or warrants to be issued for*  
22 *delinquent parking citations.*

23

24 2. That this ordinance shall become effective on adoption.

GIVEN under my hand this \_\_\_\_ day of \_\_\_\_\_ 2000.

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Nancy Vehrs  
Clerk to the Board of Supervisors