

CITY OF MILWAUKEE

Form CA-43

GRANT F. LANGLEY
City Attorney

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Assistant City Attorneys

April 11, 2003

Ronald D. Leonhardt, City Clerk
City Hall, Room 205

Re: Ordinance Relating to the Parking of Serviced Vehicles in
Commuter Parking Impacted Areas

Dear Mr. Leonhardt:

You have asked us to review Substitutes 3 and 4 to File No. 020673, which would create an ordinance relating to the parking of service vehicles in commuter parking impacted areas. In your letter you note that the purpose of the ordinance is to alleviate problems experienced by residents in commuter impacted parking areas in the City of Milwaukee. We are aware of the difficulties experienced by those residents relating to parking issues, both for the residents as well as for service providers to property owners in the impacted areas. We have addressed this issue in several previous opinions, which we have attached for your information.

We draw your attention to City Attorney Opinion dated August 27, 2002 in which we were asked our opinion on the legality of a "residents only" parking program. As stated in that opinion, under current state laws, the City could create residential parking zones permitting residents to park their vehicles without regard to posted time limits. The City cannot, however, under current state law create "residents only" parking areas. Also attached for your information is a copy of draft legislation relating to parking of vehicles on highways in first-class cities. The proposed legislation would allow any first-class city in Wisconsin to enact an ordinance authorizing residents only parking. The attached draft bill has not yet been introduced in the state legislature. We have been informed by the sponsor of the proposed bill, Representative Jon Richards, that he does not anticipate any further action until at least after the state budget bill is passed. Consequently, we anticipate that the current state law will remain unchanged at least in the near future.

You have asked for our opinion as to the legality and enforceability of the above-referenced alternative ordinances. We would like to point out that in the above-referenced opinion, we noted that the legislature has specifically authorized the creation of residential parking zones permitting residents to park their vehicles without regard to posted time limits. Section 346.55(4), Wis. Stats., provides, among other things, that owners of public property may permit

Ronald D. Leonhardt, City Clerk
Page 2
April 11, 2003

parking by certain persons and limit parking as to other persons as long as there is a sign indicating the restriction.

Substitute 4 to File No. 020673 simply allows the property owner to contact the Department of Public Works to require permission for a specific service vehicles to park beyond the posted time limits. This procedure is identical to sec. 101-27.7e, of the Milwaukee Code of Ordinances (MCO) which provides as follows:

Temporary Permission. The chief of police may temporarily suspend the enforcement of night parking restrictions specified herein when exceptional conditions are determined to exist. The chief of police shall record all such occasions, and report the dates and circumstances to the commissioner of public works.

F. Notification. The commissioner of public works may, when necessary, grant an individual overnight parking permission if the department of public works is notified prior to 1:00 a.m.


We have been informed by the City Parking Enforcement Review Manager that this system works well. The Department of Public Works gives a confirmation number to any citizen who calls in for the temporary permission/notification as provided in the all night parking ordinance, thereby enabling verification of the permission. Additionally, proposed Substitute 4 is limited to one area of the City and has is a temporary provision which will allow the Department of Public Works to determine whether the proposed ordinance is feasible. For these reasons, we believe that Substitute 4 would be the better ordinance to address the concerns raised, and is legal and enforceable.

If you have any further questions, please do not hesitate to contact us.

Very truly yours,



GRANT F. LANGLEY
City Attorney



MELANIE R. SWANK
Assistant City Attorney

MRS:wt:66495
Enclosures

1055-2003-1128

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Assistant City Attorneys

April 24, 2002

Mariano A. Schifalacqua
Commissioner of Public Works
Municipal Building, Room 516

Re: Sale of Night Parking Permits

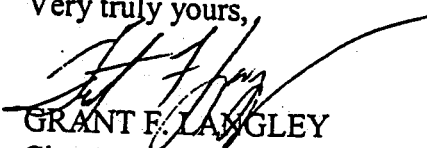
Dear Mr. Schifalacqua:

In your letter dated April 18, 2002, you asked whether a night parking permit can be denied to an individual if the vehicle does not have a license plate, as required by City Ordinance 101-27-5-a, or if the applicant does not provide proof of having applied for vehicle registration.


Section 101-27 regulates the issuance of night parking permits. The ordinance states, in relevant part, that the "application shall contain the name and address of the owner of the vehicle, the license number . . ." sec. 101-27-5-a (emphasis added). The use of the word "shall" creates a mandatory obligation. *State v Jones*, 226 Wis. 2d 565, 605 (1999). Accordingly, the Department of Public Works can require that an individual seeking a night parking permit give a license plate number or proof of having applied for vehicle registration as a condition of receiving the permit. If an individual is unable to provide either a license plate number or proof of application for the vehicle registration, a night parking permit can be denied. If this policy has not been followed in the past, and you intend to enforce it in the future, we recommend that you take appropriate steps to ensure that it is consistently followed.

If you have any further questions, do not hesitate to contact us.

Very truly yours,



GRANT F. LANGLEY
City Attorney



MELANIE R. SWANK
Assistant City Attorney

MRS:wt:52839

cc: Dorinda Floyd
Cindy Angelos
Thomas Sanders
Deputy Inspector Raymond Sucik
1047-2002-1203

CITY OF MILWAUKEE

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Assistant City Attorneys

August 27, 2002

Alderman Robert G. Donovan
8th Aldermanic District
Room 205, City Hall

RE: Residential Parking Program

Dear Alderman Donovan:

We are responding to your request of March 8, 2002 for an opinion from this office regarding the parking problems experienced by many of the residents in your district. You ask whether the City could draft and enforce an ordinance similar to the "Residential Zoned Permit Parking" program that is in place in the City of Chicago. You attached a copy of Chicago's ordinance which creates a program designed to restrict parking on designated residential streets during specified hours, except for the residents of that street, guests of the residents or those who provide a service to the residents. The Chicago program does not guarantee parking spaces but prohibits parking in specified areas for any length of time unless a resident sticker is displayed in the vehicle.

This office has previously addressed this issue and determined that there is currently no state statute which would enable the City to draft an ordinance creating an absolute prohibition for parking on City streets as applied only to non-residents. We have attached our opinion dated November 14, 1997 for your information. We have researched the law as well as the state statutes relied on in that opinion and find that they have not changed. Consequently, we do not believe the City could draft and enforce an ordinance creating an absolute prohibition to parking on City streets applied only to non-residents

You have also asked if our office could suggest possible modifications that would permit a revised version of the Chicago program that would pass legal muster in Milwaukee. As we stated in our previous opinions, City ordinances must be in strict conformity with state statutes. Section 349.03(1), Stats., provides:

Ald. Robert G. Donovan

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August 27, 2002

349.03(1) Regulation by local authorities forbidden; exceptions. (1) Chapters 341 to 348 and 350 shall be uniform in operation throughout the state. No local authority may enact or enforce any traffic regulation unless such regulation:

- (a) Is not contrary to or inconsistent with chs. 341 to 348 and 350; or
- (b) Is expressly authorized by ss. 349.06 to 349.25 or some other provision of the statutes.

As we stated in City Attorney opinion dated November 14, 1997, the Wisconsin Supreme Court in *Madison v. Reynolds*, 48 Wis. 2d 156 (1970), held that a municipality cannot rely on its police powers to "restrict the free use of all highways" as provided in sec. 349.03(2), Stats. In our 1997 opinion, however, we pointed out that the legislature has specifically authorized the creation of residential parking zones permitting residents to park their vehicles without regard to posted time limits.

Section 346.55(4), Stats., provides, among other things, that owners of public property may permit parking by certain persons and limit parking as to other persons as long as there is a sign indicating the restriction. Additionally, sec. 349.13(1e)(a), Stats., provides that a municipality may "[W]ithin the reasonable exercise of the police power, prohibit, limit the time of or otherwise restrict the stopping, standing or parking of vehicles beyond prohibitions, limitations or restrictions imposed by ch. 346. . . ." Section 349.13(1g), Stats., provides:

(1g) The department, with respect to trunk highways outside of corporate limits, and local authorities, with respect to highways under their jurisdiction including state trunk highways or connecting highways within corporate limits, may authorize persons whose residences abut a highway in a zone where the time of parking is limited by official signs, markers or parking meters to park their vehicles in the highway zone without regard to the time limits posted.

Based upon these statutory provisions, we believe the City of Milwaukee could post signs in impacted areas of the City limiting the time of parking to as little as 15 minutes (See, Milwaukee City Ordinance (MCO) sec. 101-23.)

Under current MCO sec. 101-27 - All Night Parking, and sec. 101.27.5 - Residential Daytime Parking Privilege for Non-Conforming Uses, vehicles displaying either of these permits would be allowed to ignore the time limits posted on such streets. Thus, residents would be allowed, upon proof of current license plate or registration of vehicle, to purchase daytime and nighttime parking stickers which would exempt them from the 15 minute time limitation. Such an arrangement would be legal and enforcement under the state law as long as signs were posted in the areas indicating the restrictions. We

Ald. Robert G. Donovan

Page 3

August 27, 2002

believe that the result of this program would be similar to the one that you have asked about.

Should you have any further questions or concerns, please do not hesitate to contact us.

Very truly yours,



GRANT F. LANGLEY

City Attorney



MELANIE R. SWANK

Assistant City Attorney

MRS/bl

Enc.

1093-2002-777:56923

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Assistant City Attorneys

September 3, 2002

Alderman Robert Donovan
Common Council
City Hall - Room 205
200 East Wells Street
Milwaukee, WI 53202

RE: Parking of Vehicles Without License Plates and Visible
Vehicle Identification Numbers

Dear Alderman Donovan:

We are responding to your request of January 31, 2002 for an opinion from this office regarding the legality and enforceability of draft ordinance LRB No. 01575-1. The draft ordinance prohibits "leaving any vehicle parked on city rights-of-way on which there are no license plates and on which the vehicle identification number has been removed, altered, obliterated or otherwise made impossible to read, including instances in which the number is not visible from outside the vehicle." The penalty for a violation of the proposed ordinance includes forfeiture not less than \$50.00 or more than \$1000.00, and towing the vehicle at the owner's expense. In your letter you express concern about the number of people who park unlicensed, and sometimes unidentifiable, vehicles on City streets. You are concerned that this poses a danger to other motorists, creates unwarranted traffic congestion, and hampers snow removal and other municipal services.

City Authority To Enact and Enforce Parking Ordinances

Section 349.06(1)(a), Stats., is the enabling statute that gives the City of Milwaukee authority to draft and enforce traffic regulations as long as such regulations are in "strict conformity" with one or more provisions of the state traffic regulation laws. (See secs. 341-348 and 350, Stats.) The penalty for such ordinances the City enacts cannot be greater than that provided for in state law. *Madison v. McManus*, 44 Wis. 2d 396, 401 (1969). The state law relating to proper display

Alderman Robert Donovan
September 3, 2002
Page 2

of license plates and VINs are considered to be "traffic regulations." Sec. 345.20(1)(b), Stats. A "traffic regulation" does not include nonmoving traffic violations. Sec. 345.20(1)(b), Stats. Parking citations are considered nonmoving traffic violations. Sec. 345.28(1)(c), Stats.

The Law Relating to Unlicensed Vehicles

The state law regarding proper display of registration (license) plates is found in Sec. 341.15, Stats. The penalty for failure to properly display a license plate is a forfeiture of not more than \$200.00. Sec. 341.15 (3)(a), Stats. The towing provision found in ch. 349 only applies to violations of ch. 346 and ch. 349. Milwaukee City Ordinance (MCO) 101-2 adopts sec. 341.15, Stats., and is in strict conformity with the statute. We find no enabling statute that allows towing a vehicle for failure to properly display registration (license) plates. A "municipality can enact its own law if the Legislature has been silent." Op. Att'y. Gen. March 30, 1988. The Legislature, however, has not been silent on the issue of unlicensed vehicles or improper display of license plates. Therefore, the section of your draft ordinance as it relates to license plates is not legal and enforceable.

The Law Relating to VINs

Both state and federal law require the VIN to be in a location visible from outside the vehicle and prohibit removing, altering or making the VIN impossible to read. Sec. 342.30 (1g), (2), Stats.; 49 C.F.R. § 571.115(s 4.6) (1984). The United States Supreme Court recognized the importance of access to vehicle identification numbers, stating "in light of the important interests served by the VIN, the Federal and State Governments are amply justified in making it a part of the web of pervasive regulation that surrounds the automobile, and in requiring its placement in an area ordinarily in plain view from outside the passenger compartment." *New York v. Class*, 475 U.S. 106, 112 (1986) (Emphasis added). In fact, in *Class* the court ruled that there is no reasonable expectation in privacy in the VIN, for Fourth Amendment purposes police officers may reach into a vehicle to remove obstructions to the VIN. *Id.* at 113-114.

Wisconsin state law regarding VINs, states that no person may "remove, alter or obliterate or intentionally make it impossible to read . . . an identification number." Sec. 342.30(1g), Stats. Wisconsin state law also requires the VIN to be "visible when observed from outside the vehicle" (Sec. 342.30(2), Stats.), and allows a "traffic officer or person authorized to enforce nonmoving traffic violations" to use reasonable means to access the VIN if it is not clearly visible from the outside. Sec. 342.30(2m)(a), Stats. Thus, the state statute authorizes a traffic officer or parking checker to use "reasonable means" to access a VIN if it is not clearly visible from outside of the vehicle. The statute does not define what it means by using "reasonable means" to access the VIN.

If a VIN is not visible when observed from outside the vehicle, and the vehicle is locked, we believe it may be reasonable to tow the vehicle when the only other reasonable means would be, for example, to break a window to access the VIN. The statute specifically allows seizure (towing) of a vehicle where the VIN has been removed, altered or obliterated or made impossible to read. If the VIN cannot be identified the vehicle can be seized and is presumed to be contraband. Sec. 342.30(4)(a), Stats. Under state law, an operator or owner who violates Section (1g) can be fined "not more than \$5,000 or imprisoned for not more than seven years and six months or both." Sec. 342.30(3)(a), Stats. Therefore, the penalty defined in your draft ordinance is legal and enforceable, as it pertains to VINs, because it does not exceed the penalty provided by state law (including towing the vehicle at the owner's expense.)

We recognize the serious problem created by the limited parking in certain areas of the City of Milwaukee; and recognize your interest in regulating parking in a manner that meets the competing needs of Milwaukee residents and visitors. To that end, we would like to point out some ordinances already in effect that regulate parking in the City. Aggressive enforcement of these ordinances might be an alternative means to alleviate some of the problems of which you have expressed concern. For example:

- MCO 80-49: Nuisance Vehicles: Prohibits parking a nuisance vehicle on private property, and allows towing.
- MCO 101-27: All Night Parking: Please see attached City Attorney Opinion dated April 24, 2002. An applicant for a night parking permit must provide license plate number or proof of having applied for vehicle registration as a condition of receiving the permit.
- MCO 101-27.7. Residential Daytime Parking Privilege for Nonconforming Residential Uses. An applicant for a residential daytime parking permit must also provide license plate number or proof of having applied for vehicle registration as a condition of receiving the permit.
- MCO 105-65: Control of Abandoned Vehicles and Trailers. Allows towing abandoned vehicles if they "are in a condition of disrepair and lack valid registration plates . . ." This ordinance allows towing such a vehicle if left on the street for more than 72 hours after the vehicle is placarded and 48 hours after mailing a notice to the last known address of the owner. NOTE: The enabling statute allows removal "whenever any vehicle has been left unattended without the permission of the property owner for more than 48 hours," at the owner's expense. Sec. 342.40(1m)(3)(b), Stats. You may want to consider amending MCO 105-65, because state law would permit removal much sooner than current MCO 105-65. If you choose to amend current MCO 105-65, we suggest you also define "owner" to include a "lessee," in conformity with the sec. 342.40(1a), Stats.

Alderman Robert Donovan
September 3, 2002
Page 4

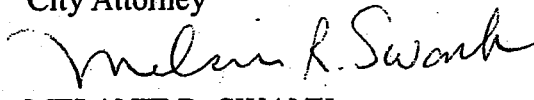
Conclusion

There is no specific statutory provision allowing for the enactment and enforcement of an ordinance prohibiting parking and allowing towing of a vehicle without a license plate, although as discussed above, state law does provide for a forfeiture for unlicensed vehicles or improper display of a license plate. Therefore, the draft ordinance as it relates to vehicles without license plates is not legal and enforceable because it is not in "strict conformity" with Wisconsin traffic regulations. If the draft ordinance were amended to delete reference to "no license plate," it would, in our opinion, be legal and enforceable. If you believe that your draft ordinance as written more fully addresses your concerns, you will need an enabling statute. You may also consider the alternatives we have suggested above to address your concerns.

If you have any further questions concerning this matter, please do not hesitate to contact my office.

Very truly yours,


GRANT E. LANGLEY
City Attorney


MELANIE R. SWANK
Assistant City Attorney

MRS/bl
1033-2002-399:56247

..Number

020673

..Version

SUBSTITUTE 3

..Reference

..Sponsor

ALD. D'AMATO

..Title

A substitute ordinance related to the parking of service vehicles in commuter parking impacted areas.

..Sections

81-87.5 cr

101-27.7-7 am

101-27.7-9 m

101-27.7-9 cr

101-27.9-10 m

..Analysis

This ordinance creates a program under which clearly-identifiable service vehicles are allowed to park within commuter parking impacted areas in excess of posted limits between the hours of 7 a.m. and 9 p.m., Monday through Friday, provided a special service vehicle parking permit appropriate to the particular parking impacted area is displayed in a manner approved by the chief of police. One such permit will be mailed to the owner of record of each parcel, as identified by tax key number, within the commuter parking impacted area.

There is no charge for these permits, but replacement permits cost \$75, unless the permit holder is still in possession of the original permit and surrenders it, in which case there is no charge.

..Body

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 81-87.5 of the code is created to read:

81-87.5. On-street Commuter Parking Impacted Area, Special Service Vehicles.

1. There shall be no charge for an original special service vehicle permit.
2. Special service vehicle permits shall not expire.
3. In those cases where the permit holder is in possession of the original permit and surrenders it, there shall be no fee for exchanging special service vehicle permits.
4. In those cases where the permit holder is not in possession of the original permit, the fee for each replacement special service vehicle permit shall be \$75.

(See s. 101-27.7-9)

Part 2. Section 101-27.7-7 of the code is amended to read:

101-27.7. Residential Daytime Parking Privilege for Commuter Parking Impacted Areas.

7. ISSUANCE OF PERMIT. Following council approval of the designation of a residential permit parking area, the police department shall issue appropriate permits and the commissioner of public works shall cause parking signs to be erected in the

areas, indicating the time, locations and conditions under which parking shall be by permit only. A permit shall be issued upon application and payment of the applicable fee, only to the owner or the operator of a motor vehicle who resides on property immediately adjacent to a street, avenue or other location within the residential permit parking area >>, irrespective of the property's street address<<.

Part 3. Section 101-27.7-9 and 10 of the code is renumbered 101-27.7-10 and 11.

Part 4. Section 101-27.7-9 of the code is created to read:

9. SPECIAL SERVICE VEHICLE PERMIT. a. Creation. There is created a special service vehicle permit program to permit vehicles used by various commercial enterprises to make calls at properties within commuter parking impacted areas and remain parked in excess of posted limits.

b. Permits to Be Mailed. The city clerk shall produce and mail one special service vehicle parking permit to the owner of record of every parcel, as identified by tax key number, in each commuter parking impacted area. This permit shall be of such size and shape as shall be deemed appropriate by the commissioner of public works, shall be numbered and shall clearly indicate the commuter parking impacted area for which it is issued.

c. Service Vehicle Parking Permitted. Clearly-identifiable service vehicles shall be allowed to park within commuter parking impacted areas in excess of posted limits between the hours of 7 a.m. and 9 p.m., Monday through Friday, provided a special service vehicle parking permit appropriate to the particular parking impacted area is displayed in a manner approved by the commissioner. Vehicles parked pursuant to this subsection shall comply with the provisions of sub. 10-a and b.

d. Replacement. The commissioner shall issue replacement permits only to the owner of the parcel to which the permit was first issued. If the parcel owner is in possession of the original permit and surrenders it, there shall be no charge for replacement. If the parcel owner is not in possession of the original permit, no replacement shall be made without the completion of an application for replacement and the payment of the fee specified in s. 81-87.5. The application for replacement shall contain the number of the special service vehicle permit for which the replacement permit is sought.

..LRB

APPROVED AS TO FORM

Legislative Reference Bureau

Date: _____

..Attorney

IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney

Date: _____

..Requestor

..Drafter

LRB02385-4

jro

03/11/03

..Number
020673
..Version
SUBSTITUTE 4
..Reference
..Sponsor
ALD. D'AMATO
..Title

DRAFT

A substitute ordinance related to the parking of service vehicles in commuter parking impacted areas.

..Sections
101-27.7-10 rn
101-27.7-10 cr
..Analysis

This ordinance creates a pilot program under which clearly-identifiable service vehicles are allowed to park within commuter parking impacted areas in excess of posted limits between the hours of 7 a.m. and 9 p.m., Monday through Friday, provided the owner of a property within a commuter parking impacted area first contacts the department of public works and provides his or her address as well as a description of the service vehicle to be parked in the area. This permission shall be requested no less than 24 hours prior to the time during which the service vehicle is to be parked on the street and shall be sought from the department for each day it is needed. This pilot program shall end 6 months after the effective date of this ordinance and shall apply only to the University of Wisconsin commuter parking impacted area as described in s. 101-27.7-9-c-18.

..Body

Whereas, Commuter parking impacted areas have proven a useful tool in easing the burden on property owners in certain areas of the city caused by regular influxes of commuter vehicles to their neighborhoods; and

Whereas, Inside these areas, parking beyond certain time limits is permitted only to residents; and

Whereas, From time to time, residents and property owners need to call in service vehicles to insure their properties are maintained; and

Whereas, The necessary work performed by these service vehicles can sometimes take significantly longer than the time permitted by the regulations governing the impacted area; now, therefore

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 101-27.7-10 of the code is renumbered 101-27.7-11.

Part 2. Section 101-27.7-10 of the code is created to read:

101-27.7. Residential Daytime Parking Privilege for Commuter Parking Impacted Areas.

10. PILOT SERVICE VEHICLE PROGRAM. a. Creation. There is created a service vehicle pilot program to permit vehicles used by various commercial enterprises to make calls at properties within commuter parking impacted areas and remain parked in excess of posted limits.

b. Service Vehicle Parking Permitted. Clearly-identifiable service vehicles shall be allowed to park within commuter parking impacted areas in excess of posted limits between the hours of 7 a.m. and 9 p.m., Monday through Friday, provided a property owner within a commuter parking impacted area first notifies the commissioner that the vehicle will be present in the area to perform services at his or her property. A property owner shall provide his or her address as well as such information as may be required by the commissioner to properly identify the service vehicle. Notice shall be provided to the commissioner no less than 24 hours prior to the time the vehicle is to be in the commuter parking impacted area. If the vehicle is to be in the commuter impacted parking area on more than one day, separate notice to the commissioner shall be required for each day the vehicle is parked on the street.

c. Effective Area. The provisions of this subsection shall only apply to the University of Wisconsin impacted area as described in sub. 9-c-18.

Part 3. This ordinance shall be null and void six months after the effective date of this ordinance [city clerk to insert date].

..LRB

APPROVED AS TO FORM

Legislative Reference Bureau

Date: _____

DRAFT

..Attorney
IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney
Date:_____

..Requestor

..Drafter
LRB02385-5
jro
03/17/03

DRAFT

2003 BILL

Richards' Draft

1 AN ACT to create 349.13 (1k) of the statutes; relating to: the parking of vehicles
2 on highways in 1st class cities.

Analysis by the Legislative Reference Bureau

Current law, with certain exceptions, permits state and local highway authorities to prohibit or restrict the stopping, standing, or parking of vehicles on highways under their jurisdictions. This bill permits any first class city (presently only Milwaukee) to enact an ordinance permitting only persons whose residences abut a highway (or any portion thereof) under the city's jurisdiction to park their vehicles on the highway or portion thereof abutting their residences, regardless of any prohibitions or time limitations on parking. The ordinance may include a provision requiring such persons to obtain a parking permit from the city and pay a fee for the permit.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 349.13 (1k) of the statutes is created to read:
4 349.13 (1k) Notwithstanding subs. (1g) and (1j), the common council of any 1st
5 class city may enact an ordinance that authorizes only persons whose residences

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