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TO: Mayor and City Council
FROM: Charles I. Wadams, City Attorney
DATE: 11/18/2021
SUBJECT: Recreational Vehicles / Tiny Homes (CPAFY2022-0001)

BACKGROUND: There is a proposal for a code amendment to allow for Tiny Home Communities in R-3 and C-2 zones, in which a Tiny Home is defined, in part, to be a “moveable home on a trailer/wheels.” The legal question is whether recreational vehicles (RVs) can be legally used as tiny homes? There was a discussion about the proposal in front of the Design Review Committee on November 15, 2021. The scheduled discussion on November 17, 2021 in front of the Planning and Zoning Commission was continued.

Answer:

Whether RVs can be legally used as tiny homes depends on the laws of Idaho and the local jurisdiction. Applying Idaho Code, which adopted the International Residential Code, H.B. 156, the National Fire Protection Association 1192 (NFPA), and other regulating bodies, it is fair to say that RVs can be classified as a “Tiny Home On Wheels” (THOW). Theoretically, a THOW designed for temporary living would be exempt from local ordinances and regulations relating to plumbing, heat producing and electrical systems in recreational vehicles. However, a THOW which is intended to stay in one place is presumably not constructed for temporary living, but permanent living. Notwithstanding a potential exemption from certain local laws, THOWs often can’t remain in a permanent location. Many cities are set up to allow THOWs to be located temporarily and utilized for a temporary duration. Thus, in cities that regulate THOWs in this manner, any THOW that remains in place over the temporary period are considered to be in violation of local law.

ANALYSIS:

A. THOWs

There are two primary types of tiny houses, and the rules and regulations for these vary dramatically. The first type of shelter is THOW. Because of the wheeled platform, this is usually classified as a recreational vehicle and requires registration with the state’s motor vehicles department. While this type of tiny house is an RV by law in most areas, some campgrounds do not permit this type of structure on the premises. Furthermore,

some states and local jurisdictions only permit full-time residency in a tiny house on wheels if it is parked in an RV park designed for permanent residency.

The other type of tiny house is one that is built on a foundation. It may be site-built, or it may be transported to your lot and permanently attached to the foundation. These structures may also be referred to as a granny flat, a granny cottage or an accessory dwelling unit (ADU). In some areas, regulations state that an ADU can only be built on a lot that has an existing home on it.

The vast majority of tiny homes fall under the THOW category.¹ This is because THOWs may be placed legally in RV parks, as well as legally towed on public roads, under the Recreational Vehicle Industry Association Standards. This can be contrasted to the minority of those who opt to use a tiny house on foundation (THOF).

It is important to note that the inspection and registration process was not designed for THOWs; it was designed for traditional RVs or mobile homes.² Because of this, professional associations such as the Recreational Vehicle Industry Association (RVIA), the NFPA, or the ANSI do not generally inspect them. This is important because THOW owners have to seek alternative agencies to inspect them, but under Idaho Code, THOWs must comply with NFPA 1192 if they want the exemption from local laws that pertain to specific areas of the law, such as plumbing, heat, and electrical.³ Additionally, because RVIA won't inspect them, THOWs do not enjoy the benefit of being able to park in any RV park they please.

Certain parks do not allow THOWs and only allow for traditional RVs, creating a burden on the owner to research what RV parks will accommodate them. THOWs are not exempt from all zoning laws, and most RV parks were created to accommodate temporary living, not permanent residences. Therefore, any THOW that remains in a location longer than the zoning laws or local ordinances permit would be in violation of the local law.

B. Idaho Law

Local jurisdictions are free to implement specific codes and regulations pertaining to tiny houses. Most of the country's local building codes have been adopted from the International Residential Code (IRC). While local jurisdictions in Idaho may have specific codes and regulations pertaining to tiny houses, Idaho has established statewide definitions for different types of tiny homes. These definitions serve as the basis for regulations going forward.⁴

¹ See "A study of tiny homes: Reconstructing the American dream of urban unaffordability" by Nikolas Summers.

² See <https://tinyhousecommunity.com/guidelines-for-thow/>

³ 2017 H.B. 156; I.C. § 39-4203, Exemption from Local Ordinances or Regulations

⁴ See State of Idaho Division of Building Safety, June 2018. https://dbs.idaho.gov/wp-content/uploads/sites/105/programs/manufactured/publications/DBS_RV-MOD-HUD_Brochure.pdf

In Idaho, tiny homes must fall into one of the following classifications and are required to comply with the building requirements for that classification:⁵

Site Built – A building constructed at the location where it is to be used. Not intended or designed to be moved. . . *Site built dwellings fall under jurisdiction of the city or county in which the building is located.* (Emphasis added).

Modular Building – Any building or building component other than a manufactured home that is of closed construction and either entirely or substantially prefabricated or assembled at a place other than the building site. I.C. §39-4105. . . Modular buildings – residential or commercial – are regulated by DBS; when approved they will bear an insignia from the state of Idaho. Work done at the place of manufacture is not subject to further regulation by local jurisdictions. *However, work done at the site, including the installation, is regulated by the local jurisdiction. Modular buildings are regulated by local planning and zoning ordinances the same as site built structures.* (Emphasis added).

Manufactured Home – A structure built in compliance with HUD manufactured home construction and safety standards established under 42 U.S.C. section 5401, and defined at I.C. § 39-4105.

Recreational Vehicle – A motor home, travel trailer, fifth-wheel trailer, park model recreational vehicle, truck camper or folding camping trailer designed for recreational camping or seasonal use (I.C. § 49-119). A park model recreational vehicle is a type of recreational vehicle built on a single chassis with no more than 400 square feet in area (I.C. § 49-117).

The maximum width of RV homes is 8.5 feet. These are tiny houses that are suitable for emergency housing or recreational housing. They are similar to a camper trailer, a travel trailer or a motor home.

Idaho Code Sections 39-4105 and 39-4201 have additional definitions of manufactured home, mobile home, and RV. Namely, I.C. 39-4105(9) states a “mobile home’ means a factory-assembled structure or structures generally constructed prior to June 15, 1976, and equipped with the necessary service connections and made so as to be readily movable as a unit or units on their own running gear and designed to be used as a dwelling unit or units with or without a permanent foundation.” Chapter 41, Title 39 may cover some questions as a result.

It appears that HUD recently changed their rules defining RVs, which commonly included tiny homes. One of the things to inquire about is what the “Manufacturer’s Notice” says about the tiny home. The notice would indicate whether it was intended to be used for temporary, recreational purposes or whether it was intended to be used as

⁵ Interestingly, Idaho is the first state to discuss RV’s, manufactured, modular, and tiny houses in the same reference document.

a primary residence. This may push the tiny home into the manufactured home classification, at least for HUD purposes.

Additionally, one would want to inquire about what standards it was built to aid in determining whether it should be classified as an RV or a manufactured home. Generally, 24 CFR 3282.15 states that an RV is a vehicle or vehicle structure not certified as a manufactured home; designed only for recreational use and not as a primary residence or permanent occupancy; and is either built and certified in accordance with either NFPA 1192 or ANSI A119.5 standards (the tiny home should have a placard somewhere indicating the manufacturer's design standards), or the vehicle is self-propelled. There are also notice requirements on the vehicle owner's side of things to determine whether or not the exemption would apply as well. So, one should look at the entirety of the CFR. Per I.C. § 39-4202 all new RVs sold in Idaho must meet either NFPA 1192 or ANSI A119.5 manufacturing standards – so if the tiny home at issue was built to those standards, it might fall more towards the RV designation and less towards the mobile home or manufactured home designation.

1. I.C. § 49-119

As mentioned above, under I.C. § 49-119, an RV is defined as a motor home, travel trailer, fifth-wheel trailer, park model recreational vehicle, truck camper or folding camping trailer, with or without motive power, *designed for recreational or emergency occupancy*. It does not include pick up hoods, shells, or canopies designed, created or modified for occupational usage. . . I.C. § 49-119(6).

Importantly, the current code resulted from amendments made in 2017. Part of the amendments that were made included the deletion of the phrase “human habitation for” following “designed for” in the first sentence of subsection (6).

There is a strong argument to be made that because the legislature deleted “human habitation for” from the definition, they intended that any RV designed for long term human habitation should lose status as an RV altogether, resulting in a loss of immunity from local laws and ordinances, as well as a need to conform to local housing/zoning requirements.

Additionally, the State of Idaho Division of Building Safety states: “For a tiny house classified as an RV, you may have challenges in obtaining planning and zoning approval.”⁶ This is likely because the Idaho Transportation Department regulates RVs and requires that RVs must comply with ANSI A119.5 or NFPA 1192 Standard for Recreational Vehicles. This is not easy to accomplish, especially when you consider that those agencies won't inspect THOWs, making it nearly impossible for them to obtain an inspection whose certification complies with state law.

2. Other Idaho Jurisdictions

⁶ See https://dbs.idaho.gov/wp-content/uploads/sites/105/programs/manufactured/publications/DBS_RV-MOD-HUD_Brochure.pdf

Three cities in Idaho that allow tiny homes for permanent residences are Boise, Wilder, and Moscow. Lewiston has also looked at it. The City of Wilder, Idaho (located in Canyon County) passed an ordinance with the purpose of being a “tiny home friendly city”. The relevant portions of the ordinance define a tiny home, require a “tiny home permit” before construction, create tiny home overlay districts within their zoning, and set forth standards that tiny homes must meet.

For purposes of this memo, the most important factors to consider in the ordinance are that a tiny home is a “non-mobile residential dwelling....” and the City of Wilder requires that:

A tiny home must be secured on an appropriate solid foundation. A tiny home originally built on a trailer is required to remove all wheels/axels in order to be properly secured to a foundation. . . A tiny home must have a driveway with a minimum capacity for two standard vehicles. . . A tiny home must be connected to City water and wastewater services. No composting toilets are permitted.

Bill No. 2017-03 § 9-7-6(B).

Essentially, in order to meet the requirements, set forth by the City of Wilder, owners of tiny homes must classify and construct their tiny homes under the classification of a THOF. This is important, because it eliminates the option to classify under a THOW. Because THOFs are not RVs, they do not enjoy the immunity from local laws under I.C. § 39-4203.

Boise and Wilder require tiny houses to be on a permanent foundation. Moscow apparently doesn't require a foundation, and allows for THOWs on a permanent basis, but only in mobile home and RV parks.

CONCLUSION: Someone trying to classify an RV as a tiny home is going to have an uphill battle in Idaho, but it may be legal. An RV itself is defined as being made for temporary or recreational use. Because of this, an RV that classifies as a THOW will lose the ability to be classified as an RV under Idaho Code if the ultimate goal is to use the THOW in one permanent location. The inability to classify as an RV results in the lost exemption of local ordinances and regulations regarding mechanical, electrical, and plumbing. Additionally, because registration and permits can't be obtained properly without meeting ANSI or NFPA requirements, meeting zoning laws is going to be difficult without an inspection from either agency. Remember, both ANSI and the NFPA will not inspect THOWs. Another issue is location, as RV parks and cities can regulate THOWs and in many instances, don't allow them to remain in one spot longer than thirty days.

Tiny homes aren't necessarily “illegal” on their own; rather, the trend of tiny homes out there that are so popular doesn't usually meet all requirements and regulations. Tiny

homes enter into a legal grey area due to distinction and definition. There may be minimum standards that apply to electrical installation, plumbing, and waste removal, and even how kitchens and bathrooms are built. Depending on the location and how somebody answers the list of questions, different regulations may apply.

One easy example to understand is THOWs because it is automatically considered by many local governments to be a recreational vehicle. If somebody decides to register a THOW legally as an RV, they may have a difficult time claiming it is a permanent residential home later. Furthermore, for THOWs that are considered RVs, the insurance for it and what those insurance covers will be very different from homeowners' insurance. Therefore, for turning a tiny home into permanent home, it may be best to look into a permanent foundation tiny home instead of one on wheels.

Therefore, even when a THOW properly meets the requirements established by law, finding a permanent location can be very hard to do. Under Idaho Code, establishing an RV as a THOW can be achieved by following strict regulation standards, but getting a THOW to sit in a permanent location is near impossible. Many cities may take the City of Wilder's structure and mandate THOFs as opposed to THOWs in certain areas of their cities, another indicator that THOWs may not be the best option for permanent residences.