

## **Euclid, Ohio**

One of the most significant decisions involving RV parking took place in Euclid, Ohio, in 1977. This was a major victory for RV owners for two reasons: the focus of the case was on aesthetic values, and the case reached the U.S. Supreme Court. The following is a synopsis of the events that led to this landmark decision; Corinne Shulman, a California attorney, prepared the text.

The case is known as *City of Euclid v. Fitzthum, et al.*, 48 Ohio App. 2d 297,357 N.E. 2d 402 (1976), cert. denied 429 U.S. 1094, 51 L. Ed. 2d 540 (1977).

Some years ago, Euclid, Ohio, adopted an ordinance that prohibited the parking of “any type of truck, trailer, auto trailer or trailer coach” in residential areas, on either public or private property, unless such unit was “parked or stored in a completely closed structure.” In 1974, nine RV owners were cited for parking their RVs on their property, and they and others banded together in a determined effort to fight the ordinance. The matter was tried at the municipal court level as a criminal offense and the owners were found guilty and fined, the trial court found the ordinance constitutional. The RV owners appealed and the Ohio Court of Appeals reversed their convictions, finding the ordinance unconstitutional. It is that decision, made in February 1976, to which we've referred you, for subsequent petitions by the City of Euclid, first to the Ohio Supreme Court and then to the U.S. Supreme Court, were both denied and the opinion of the Ohio Court of Appeals is now final. The state appellate court said that in Ohio, zoning restrictions for purely aesthetic reasons are unconstitutional, and that the ordinance, to be constitutional, must be a valid exercise of police power, the power to regulate for the public health, safety, morals, and welfare. The court then stated that: The vice of the present ordinance is that the record will support neither an application of the ordinance which bears a substantial, and therefore reasonable, relationship to public health, safety, morals or welfare nor the imposition of a taxonomic scheme based on any state of facts that may reasonably justify it. Part of the lack of reasonableness is exposed by evidence of an uneven regulatory application. Reviewing the facts illustrated the “constitutional inadequacies of the ordinance.” The city had produced testimony to show that a trailer parked in a driveway would interfere with access for fire-fighting equipment, would serve as a conduit for fire, was more difficult to move than a car, lowered property values, and under certain circumstances, could create a safety hazard by obstructing the view of street traffic. The RV owners had produced evidence to show that automobiles (which were not prohibited from driveway or street parking) could be conduits for fire and/or cause fire hazards and may be unsightly when stored outside. But the state appellate court properly disregarded this evidence, following a generally recognized rule of law that it is for the trier of the fact (here the trial court) to resolve conflicts in evidence. The court then posed and answered the constitutional question: Where, then, are the Due Process and Equal Protection vices of the ordinance?

They lie in the indisputable fact that enclosing vehicles classified as trailers does not change the fire hazard propensities and it does not enlarge health safeguards. Indeed it is clear beyond peradventure that enclosure may diminish health and safety factors by trapping sewage spillage from portable sanitary facilities and collecting highly flammable escaping propane gas, which would otherwise be dissipated in the air. These are factors too obvious to be resolved on mere credibility determinations. They point up the arbitrariness and unreasonableness of the attempt to regulate. Uncontrovertibly evidence also supports the Equal Protection violation in requiring vehicles in the trailer classification to be enclosed. This evidence is found in omission of boats from the proscription unless parked on trailers — despite the obvious fact that non trailer boat parking so decrease mobility that a boat so stationed is a greater safety hazard than one capable of movement on wheels.

The Euclid decision is of great value in at least two areas:

First, it is directly on point if you are facing an ordinance that limits the storage of RVs to enclosed structures, and should be brought to the attention of the planning commission, city council, and/or city attorney contemplating the enactment of such an ordinance.

Next, the state appellate court's determination that the Equal Protection Clause of the United States Constitution was violated by this ordinance which failed to include other recreational equipment (boats not on trailers) means that an ordinance which is not all-encompassing also would be subject to attack. As a practical matter, you may want to hold this argument in reserve, rather than pointing out what may be fatal flaws in a proposed ordinance. The background facts in the Euclid case are of additional value, for the evidence available to the RV owners in Euclid is equally available to you. Try to find out the reasons for the proposed ordinance, then come in with material and argument to show that automobiles are equally “guilty,” for it is unlikely that the city would adopt an ordinance prohibiting the parking of automobiles as well.

Thus, if the city suggests that RVs are “unsightly,” bring in some snapshots of the most dilapidated cars you can find parked on your city's streets; if the city talks in terms of fire hazard, question the presumed difference between an RV and a locked car.

The possibilities are endless, and the Euclid case should prove invaluable.

### ***1377.08 RECREATIONAL VEHICLE PARKING OR STORAGE.***

*As used in this section:*

- *“Vehicle” is defined as it is in the Traffic Code.*
- *“Recreational vehicle” includes boats and is defined as a portable structure that is self-propelled or towable by another vehicle and of such size and weight as not to require special highway movement permits. Such vehicle shall be primarily designed, constructed or modified to provide temporary living*

*quarters or for recreational, camping or travel use, and not for commercial purposes or for profit, and shall include, but not be limited to, the following:*

- "Travel trailer" means a vehicular portable structure built on a chassis designed to be used as a temporary dwelling for travel, recreational and vacation uses and permanently identified as a "travel trailer" by the manufacturer.*
- "Pick-up camper" means a structure designed primarily to be mounted on a pick-up or truck chassis and with sufficient equipment to render it suitable for use as a temporary dwelling for travel, recreational and vacation uses.*
- "Motorized home" means a portable dwelling designed and constructed as an integral part of a self-propelled vehicle.*
- "Folding tent-trailer" means a canvas folding structure, mounted on wheels and designed for travel and vacation uses.*
- "Boat" or "boat trailer" includes boats, floats and rafts, plus the normal equipment to transport the same on the highway.*
- "Driveway" is defined as that area of any residential property designed for vehicular ingress and egress to and from such property.*
- "Parking" means the stationary placement of any vehicle for a continuous period of less than twenty-four hours.*
- "Storage" means the stationary placement of any vehicle for a continuous period in excess of twenty-four hours.*
- No person shall park or store any recreational vehicle as defined herein in a U1 or U2 Use District, provided, however, that such vehicles may be parked or stored in a U1 or U2 Use District subject to the following conditions:*
  - In a completely enclosed structure, or outside of a completely enclosed structure, but not in front of the rear building line, nine feet to the rear of any habitable building structure, eight feet from the side line, or three feet from the rear property line. In the event the property is a corner lot there shall be a minimum of eight feet from the rear property line and in no case in front of the front building line of the adjoining structure.*
  - By a permit at a one time fee of five dollars (\$5.00) from the Commissioner of Buildings requiring such information on such form as he or she may prescribe from all recreational vehicle owners.*
  - No fixed connections to water, gas, electricity or storm or sanitary sewer facilities shall be attached to the recreational vehicle, except that a temporary electrical connection not to exceed twenty-four hours is permitted for the sole purpose of generating electrical energy to charge up the battery or generating system.*
  - The recreational vehicle shall not be used for living or housekeeping purposes while stored on such lot.*
  - All recreational vehicles must carry a current year's license and/or registration.*
  - The recreational vehicle shall be limited to twenty-five feet in length from end to end but not including the size of any hitch or attachment.*
  - Not more than one recreational vehicle shall be granted a permit for parking outside a completely enclosed structure, except upon permission received from*

*the Police Department for purposes of allowing a visiting recreational vehicle for temporary parking purposes.*

- *No person shall park or store any recreational vehicle as defined herein in a U3, U3E or U3EL Use District, provided, however, that such vehicles may be parked or stored in a U3, U3E or U3EL Use District subject to the following conditions:*

- *In a completely enclosed structure; or outside of a completely enclosed structure only if the recreational vehicle does not exceed twenty feet in length, unless permitted by the owner of the premises or his or her agent.*

- *Recreational vehicles may be parked in the driveway of the premises for a period not to exceed twenty-four continuous hours in any seven-day period as a complete exception to the terms and requirements of this section for loading or unloading purposes only, provided, however, that the Zoning Commissioner shall be authorized to grant permission to park a recreational vehicle in the driveway of the premises for a period not to exceed forty-eight continuous hours within a seven-day period for loading or unloading purposes only.*

- *The Planning and Zoning Commission, with the confirmation of Council, may grant a variance from the restrictions of this section to any applicant upon a showing that the restrictions of this section impose an undue hardship as a result of any of the following conditions existing upon the property where the recreational vehicle is to be stored:*

- (1) *Topography of property;*

- (2) *Corner lot;*

- (3) *Location of garage;*

- (4) *Setback of home;*

- (5) *Location of home on property;*

- (6) *Size and length of recreational vehicle.*

*For any variance from sideline or rear line requirements, the Planning and Zoning Commission and Council shall consider the consent or objection of adjacent property owners.*

*For variances from the rear line of a habitable building structure, the applicant shall submit the plan to the Building Division and the Fire Department, and the Fire Department shall inspect for access requirements and make a recommendation on the proposed variance. (Ord. 117-1980. Passed 5-5-80.)*

*Any person or persons storing recreational vehicles within the City at the time of the passage of this section shall comply with the terms and conditions contained herein on or before thirty days from passage. (Ord. 145-1979. Passed 5-21-79.)*