

CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF MEREDITH DALGLISH

CASE NO. 1120130

DESCRIPTION OF VEHICLE: Dodge Caravan (OR 137BUL)

DATE OF HEARING: July 19, 2012

APPEARANCES:

Ms. Meredith Dalglish, Appellant

HEARINGS OFFICER: Ms. Kimberly M. Graves

Ms. Dalglish appeared at the hearing and testified on her own behalf. No one appeared on behalf of the City. The Hearings Officer makes this decision based on substantial evidence upon the record as a whole, which includes the testimony of Ms. Dalglish and the documents admitted into evidence (Exhibits 1 through and including 10).

Summary of Evidence:

Ms. Dalglish submitted four items related to the tow of her vehicle on July 6, 2012. Ms. Dalglish submitted a Tow Hearing Request Form, Exhibit 1, in which she indicates that her vehicle was towed from SW Clay, between 2nd and 3rd Avenues. In Exhibit 1, Ms. Dalglish summarizes the reasons why she believes the tow of her vehicle was invalid. Ms. Dalglish also submitted Exhibit 2, a type-written letter, providing more detail about why she believes the tow of her vehicle is invalid. In Exhibit 2, Ms. Dalglish indicates that she parked her vehicle around 3:45 p.m. on July 6, 2012 and that she had a "handicapped sticker clearly displayed." Ms. Dalglish writes:

"There were signs behind my space for a 15 minute parking and signs two spaces west of me with a no parking loading zone . . .

In the space where I parked, there was NO SIGNAGE, AND NO

INDICATION THAT AFTER 5 pm, this becomes a tow away area."

Ms. Dalglish writes that she returned to where her vehicle was parked at approximately 7:30 p.m. and found that her vehicle had been towed. Ms. Dalglish indicates in Exhibit 2 that she was shocked and disheartened to have her vehicle towed, and that retrieving her vehicle was costly. Ms. Dalglish indicates that having her vehicle towed has placed her in a difficult financial situation for the month, due to her limited income. Ms. Dalglish submitted Exhibit 3, photos related to the tow of her vehicle, for the Hearings Officer's consideration. The photos on page one of Exhibit 3 show the sidewalk in front of Morton's Steak House. A No Parking sign can be seen, though not read, in the background of the photos; in the foreground of the photos is a black, metal post. Ms. Dalglish has drawn arrows on each photo indicating where her vehicle was parked prior to towing. The left hand photo on page two of Exhibit 3 also shows the sidewalk in front of Morton's Steakhouse from a similar view as

on page 1 of the exhibit. The second photo on page 2 shows an Oregon Disabled Permit hanging from a rearview mirror. Exhibit 4 is a copy of a receipt from A & B Towing and Recovery.

Ms. Dalglish appeared at the hearing and hearing and testified that she was doing a favor for a friend when she parked her vehicle "just east of Morton's" on July 6, 2012. Ms. Dalglish testified that she is a disabled senior with a disabled tag displayed on her vehicle's mirror. Ms. Dalglish testified that she did not see any signs in front of Morton's indicating that it was a tow away zone. Ms. Dalglish testified that there was no marking on the curb indicating that the area was a tow away zone. Ms. Dalglish testified that she parked her vehicle around 3:30 p.m. and that she did not see a valet, or anyone else, present who she could ask about the parking restrictions. Ms. Dalglish testified that she noticed the "5 minute" parking sign to the east of her vehicle and the No Parking sign to the west of her vehicle, and believed that her vehicle was parked properly. Ms. Dalglish testified that her vehicle was parked with its passenger front tire aligned with the black pole seen in Exhibit 3. Ms. Dalglish testified that her "main point" is that the signage in the area is "confusing". Ms. Dalglish indicated that she believes that towing the vehicle of a disabled person could result in a "life and death" situation and should be avoided. Finally, Ms. Dalglish testified that having her vehicle towed resulted in a significant emotional, physical and financial strain.

The City submitted Exhibits 8 through, and including, 10 for the Hearings Officer's consideration. Exhibit 8 is a Tow Hearing Report indicating that Ms. Dalglish's vehicle was towed on July 6, 2012 at approximately 6:00 p.m. from the North side of SW Clay between 2nd and 3rd Avenues. The report indicates that the vehicle was towed for being in violation of a "prohibited time" restriction. The narrative portion of the report reads "When approaching Morton's while on routine patrol, the valet asked if I can tow the vehicle in question because it has been there for a while and they need their space clear." The report indicates that the signage in the area prohibits parking between 5:00 p.m. and 12:00 midnight all days. Exhibit 9 is a copy of a citation issued to Ms. Dalglish on July 6, 2012. Exhibit 10 contains 3 photos related to the tow of Ms. Dalglish's vehicle. The upper photos show the license plate and side of Ms. Dalglish's vehicle. The lower photo shows a sign prohibiting parking between 5:00 p.m. and 12:00 midnight all days. Below the no parking sign is a sign limiting parking to 5 minutes between 4:00 p.m. and 6:00 p.m. Monday through Friday. The signs are together on one post. The parking enforcement officer has drawn a circle on the bottom photo showing where Ms. Dalglish's vehicle was parked prior to towing.

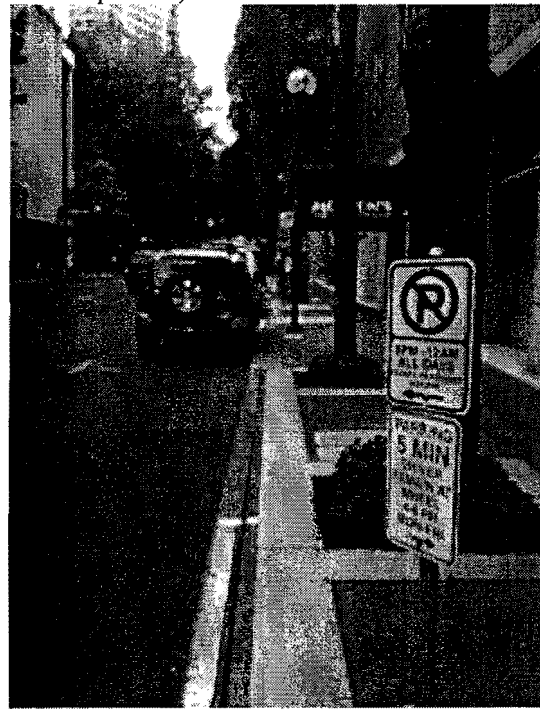
At the Hearing, the Hearings Officer had difficulty reconciling the photos submitted by parking enforcement with the photos submitted by Ms. Dalglish. The Hearings Officer concluded that viewing the location where Ms. Dalglish's vehicle was parked prior to towing would be helpful when determining whether the tow of the vehicle was valid or not. Ms. Dalglish agreed that it would be helpful for the Hearings Officer to view the site of the tow. On July 24, 2012, the Hearings Officer visited the site of the tow. The Hearings Officer took photos of the signage present in the area, and has included the photos in this order for illustration. The photos are shown starting with the easternmost corner of SW Clay and 3rd (photo 1.) and continuing past the location where Ms. Dalglish's vehicle was parked prior to towing (photo 4).

1.

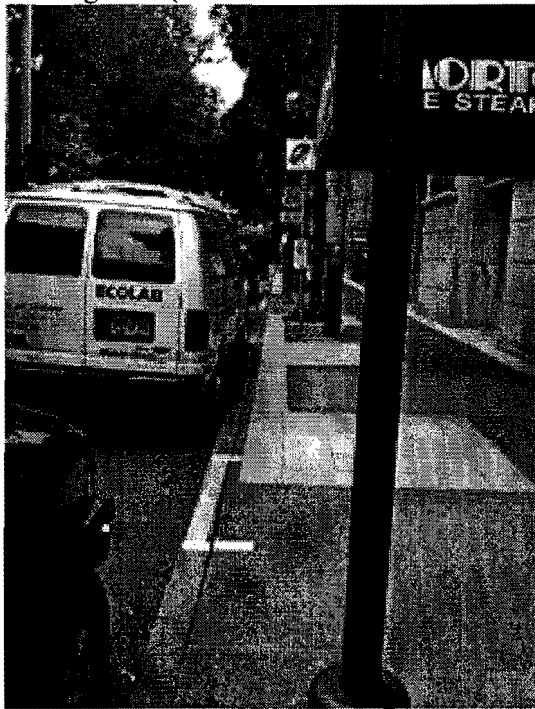
View from the corner of SW Clay and SW 3rd – looking west



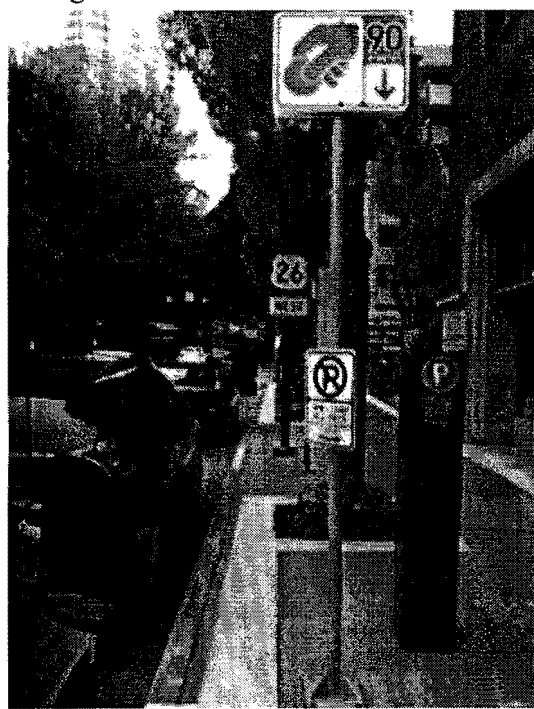
2. View approx. 50 feet from the corner of SW Clay and SW 3rd – looking west
(black SUV parked where Ms. Dalglish testified she was parked)



3. View of post seen in Ms. Dalglish's photos – looking west (black SUV in lower left corner)



4. View beyond Morton's and black SUV – looking west



Applicable Law:

Portland City Code ("PCC") 16.30.410 A allows a person whose vehicle was ordered towed by the City of Portland from a City of Portland right-of-way to file an appeal before the City of Portland Tow Hearings Officer "to contest the validity of the tow." A tow is considered valid by the Tow Hearings Officer if the person who ordered the tow followed all relevant laws and rules. In this case the relevant laws/rules are found in PCC 16.30.210 A.1, PCC 16.30.205 C, and PCC 16.30.220 B.

PCC 16.30.210 A.1 authorizes a Parking Enforcement Officer to order a vehicle towed and stored, at the owner's expense, if the vehicle is parked in any public right-of-way and the vehicle is parked in violation of any temporary or permanent parking restriction. PCC 16.30.205 C states that a sign which prohibits parking during certain hours is in effect during the days and times shown on the sign. PCC 16.30.220 B permits a Parking Enforcement Officer to order a vehicle towed, without prior notice, if the vehicle is illegally parked in a conspicuously posted restricted space/zone.

In this case two additional laws/rules are applicable; PCC 16.20.640 and Oregon Revised Statute ("ORS") 811.637. PCC 16.20.640 describes rights and restrictions to be applied to vehicles displaying a disabled person placard. ORS 811.637, a state of Oregon statute, describes rights and restrictions to be applied to vehicles displaying disabled person placards. PCC 16.20.640 A provides a vehicle properly displaying a disabled person placard may park in any "metered or nonmetered space with a designated time limit of 30 minutes or more for any amount of time without a fee."

PCC 16.20.637 B states, "a vehicle with a program placard issued under Oregon Revised Statutes 811.607 may park as provided under Oregon Revised Statutes 811.637." ORS 811.637 (1) states, in part, that, "a program placard described under ORS 811.607 confers only the following privileges." ORS 811.637 (2) states:

"the privileges granted under subsection (1) of this section do not include any of the following: (a) parking in zones where stopping, parking or standing of all motor vehicles is prohibited. (b) Parking in the late evening or overnight where such parking is prohibited. (c) Parking in zones reserved for special types of motor vehicles or activities. (d) Parking in zones where parking is permitted for 30 minutes or less."

The Hearings Officer takes judicial notice of the State of Oregon DMV website related to disabled person parking placards. Specifically, the Hearings Officer takes notice of the webpage that displays the application form for a disabled person parking permit placard (<http://www.odot.state.or.us/forms/dmv/265.pdf>). The application form states the following:

"Parking privileges for all types of parking permits DO NOT apply to a zone where:

- Stopping, parking or standing of all vehicles is prohibited.
- Late evening or overnight parking is prohibited.
- Parking is reserved for special types of vehicles or activities."

Findings of Fact and Conclusions of Law:

The Hearings Officer finds that a vehicle displaying a disabled person parking placard is granted special rights and privileges to park his/her vehicle. The Hearings Officer, however, finds that those special rights and privileges do have limits. The Hearings Officer finds that those limitations are summarized in the application for a disabled person parking permit (<http://www.odot.state.or.us/forms/dmv/265.pdf>), ORS 811.637.

PCC 16.20.640 B incorporates ORS 811.627 as part of the City Code. The Hearings Officer finds that PCC 16.20.640 B incorporates the limitations set forth in ORS 811.637 (2). The Hearings Officer finds that ORS 811.637 (2) does not allow a person with a valid disabled person parking placard to park in "zones reserved for

special types of motor vehicles or activities.” The Hearings Officer finds special activities to include, for example, valet parking zones.

The Hearings Officer finds that the current application form for a person applying for a disabled person parking placard includes general reference to the limitations set forth in ORS 811.637. The Hearings Officer finds that that Ms. Dalglish, as the holder of a disabled person parking placard, is subject to PCC 16.20.640 and ORS 811.637.

The Hearings Officer finds that the space where Ms. Dalglish’s vehicle was parked was conspicuously posted with permanent parking restriction signs. The Hearings Officer notes that the “5 minute” parking sign Ms. Dalglish testified to seeing, is located on the same post as the “No parking between 5pm and 12pm” sign which she denies awareness of. The Hearings Officer finds that the disabled person parking placard, displayed by Ms. Dalglish in her vehicle at all times relevant to this case, does not allow Ms. Dalglish to park her vehicle during the restricted hours listed on the No Parking sign.

The Hearings Officer is sympathetic to Ms. Dalglish’s disabilities. However, as the owner of a motor vehicle which is parked on the City of Portland public right-of-way, Ms. Dalglish is expected, as all other vehicle owners, to personally check to assure that there are no parking restrictions present in the location where her vehicle is parked.

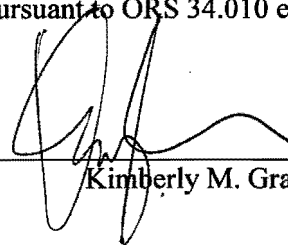
The Hearings Officer finds that the parking patrol officer who ordered Ms. Dalglish’s vehicle towed on July 6, 2012, followed all relevant laws/rules. The Hearings Officer finds the tow of Ms. Dalglish’s vehicle on July 6, 2012 to be valid.

Order:

Therefore, it is ordered that all towing and storage charges against the vehicle shall remain the responsibility of the vehicle’s owner.

This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: August 2, 2012
KMG:c1/c2


Kimberly M. Graves, Hearings Officer

Enclosure

Bureau: Parking Enforcement
Tow Number: 10649

Exhibit #	Description	Submitted by	Disposition
1	Tow Hearing Request Form	Dalglish, Meredith	Received
2	Letter	Dalglish, Meredith	Received
3	Photos	Dalglish, Meredith	Received
4	Receipts (partially obscured)	Dalglish, Meredith	Received
5	Tow Desk printout	Hearings Office	Received
6	Hearing Notice	Hearings Office	Received
7	Notice of Rights and Procedures	Hearings Office	Received
8	Tow Hearing Report	Parking Enforcement	Received
9	Parking Violation	Parking Enforcement	Received
10	Photos	Parking Enforcement	Received