



December 19, 2012

Final Investigative Report Concerning Ombudsman Complaint 2012-0271

COMPLAINT

On October 17, 2012, an 81 year old, disabled, Anchorage citizen parked his vehicle in a designated handicapped parking space in the Post Office Mall parking lot, and neglected to display his valid State of Alaska issued handicapped parking placard. Easy Park issued the citizen a \$250.00 citation for illegally parking in a designated handicapped parking space (A.M.C. 9.30.235). The citizen contacted Easy Park and explained that he possessed a valid State placard, which he forgot to display, and requested that the Municipality, through their agent Easy Park, waive the fine or void the citation. Following an administrative review, Easy Park denied the citizen's appeal. The citizen believes that because he possessed a valid State issued placard when the citation was issued, the Municipality should waive the fine or dismiss the citation.

FINDINGS

This complaint against the Municipality, through their agent Easy Park, regarding Easy Park citation 912000654 is **JUSTIFIED**

ANALYSIS AND CONCLUSIONS

The complainant wrote Easy Park on October 17, 2012 contesting the citation, stating that he possessed State of Alaska Handicap Placard #PU8700, with an expiration date of 12/31/2015. The complainant further stated that he keeps the placard in the visor of his vehicle, and that on the day the citation was issued, he forgot to display the placard from the rear view mirror. The complainant also stated that he had recently spent two months in the Intensive Care Unit of Alaska Regional Hospital following heart surgery, and that forgetfulness is a side effect of his surgery and treatment.

The complainant originally contacted the Ombudsman on November 2, 2012, at which time he was directed to file an administrative appeal with Easy Park, and informed that he could contact the Ombudsman if the issue was not addressed to his satisfaction through the appeal process. The complainant filed an appeal with Easy Park, which was denied on November 19, 2012. The complainant contacted the Ombudsman on November 22, 2012, requesting assistance. The Ombudsman contacted Easy Park on November 26, 2012, requesting information regarding the citation and denial of appeal.

On November 27th Easy Park emailed the Ombudsman a timeline and details regarding citation 912000654. Easy Park confirmed the basic elements of the case, and stated that the appeal was denied because the complainant has an outstanding citation, issued by the Anchorage Police Department, for

illegally parking in a designated handicapped parking space at Jitters Coffee in Eagle River in 2007. As a result of discussions involving the Ombudsman, Easy Park reduced the 2012 citation to a warning on November 27th.

Even though the citation has been reduced to a warning, the question remains, should the Municipality, through Easy Park, have granted the appeal to void the citation, or reduce it to a warning, without necessitating intervention by the Ombudsman? Article VII, Section 17.01, "Equal Rights," of Anchorage's Home Rule Charter and Title 5, "Equal Rights," in Anchorage Municipal Code, demonstrate the priority which the Municipality of Anchorage places on making reasonable public accommodations for persons with physical disabilities. One manifestation of that priority is the accessible parking requirements for commercial, industrial, public and institutional facilities found in A.M.C. 21.45.080.X.8.

In the decades since President George H.W. Bush signed the Americans with Disabilities Act into law in July 1990, our society has come to recognize the everyday struggles of persons with disabilities, and that offering reasonable accommodations is the fair and equitable thing to do, to ensure the maximum participation of all citizens in our society, regardless of disability status. The State of Alaska recognizes the need for accommodating persons with physical disabilities by implementing, among other laws, A.S. 28.10.495, "Parking Permit For Vehicle Transporting a Person With a Disability," and AS 28.10.181.d, "Registration of Unique and Special Vehicles and Vehicles Used for Special Purposes."

The Municipality acknowledges the same need through A.M.C. 9.30.235, "Parking reserved for persons with disabilities," which encompasses many of the elements of AS 28.10.495. The \$250.00 fine which the Municipality levies for violations of A.M.C. 9.30.235 reflects the desire to ensure that designated handicapped (accessible) parking spaces are reserved for and used only by persons who meet the criteria outlined in Municipal Code and State Statute. Evidence of an objective to punish citizens who possess a valid handicapped parking placard, but forget to display it, with a \$250.00 fine for parking in a space designated and set aside for their use, is absent.

Even though Easy Park was justified in issuing the initial citation, the Municipality, through their agent Easy Park, did not offer a fair and adequate administrative remedy for the complainant on appeal. A.M.C. 9.48.130, "Vehicular offenses amendable to disposition without court appearance by payment of a fine, offenses requiring court appearance, or offenses correctable without fine or appearance" offers administrative (correctable) remedies for several offenses, including driving without proof of insurance (\$500 fine) and tinted windows (\$300 fine), regardless of disability status. However, Municipal Code does not offer a similar option to persons recognized by the State of Alaska as being disabled and issued handicap placards, who forget to display their placard when parking in a designated handicapped parking space which they have been "pre-qualified" by the State to park in.

The Ombudsman finds this to be a lack of a fair and reasonable accommodation through the administrative appeal process and Municipal Code and contrary to Anchorage Municipal Code, Chapter 5.10.010, "Equal Rights; Policy," which states:

"The public policy of the municipality is declared to be equal opportunity for all persons. The assembly finds that invidious [unjust] discrimination in the sale or rental of real

property, financing practices, employment practices, **public accommodations**, educational institutions, and **practices of the municipality**, based upon race, color, sex, religion, national origin, marital status, age, or **physical disability**, adversely affects the welfare of the community. Accordingly, such discrimination is prohibited.”

Because Anchorage Municipal Code and Easy Park’s policies do not offer an adequate, fair and reasonable administrative remedy for persons with disabilities who are cited for illegally parking in a designated handicapped parking space, who possess a valid State issued handicapped placard, but fail to display, the Municipal Ombudsman finds this complaint to be JUSTIFIED. A preliminary report regarding this matter was provided to Easy Park, and the agency response was received on December 18, 2012. **Based on the investigation of this case, the Municipal Ombudsman recommends the following:**

(1) Anchorage Municipal Code, Chapter 9.48.130 should be amended to add illegally parking in a designated handicapped parking space as a correctable offense; the agency response was that it disagreed with this recommendation and stated “Though we understand the impetus for recommendation (1) we do not support the proposed code language change. The change could result in inconsistent HDCP Placard display and an increase in the number of citations issued. The resources required to issue, administer and adjudicate these citations mandate that code be structured to minimize the number of citations issued. HDCP Placard Parking Citation adjudication already allows for leniency for the appellant. As an example, within the appeal process, at the administrative review level, HDCP display citations are reduced to a warning (no fine) for the 1st time violator who submits proof of HDCP Placard possession.” *The Ombudsman believes that a one-time reduction to a warning does not constitute a fair and adequate administrative remedy.*

(2) that pending amendment of Municipal Code, the Anchorage Police Department and Easy Park reduce to warnings any citations issued for illegally parking in a designated handicapped parking space, if the person cited provides a State issued handicapped placard which was valid at the time the citation was issued; the agency response neither agreed or disagreed with this recommendation and stated that “Recommendation #2 is already being done, provided the appellant has had no previous HDCP display violations, and/or does not have any other unresolved parking citations.” *The Ombudsman believes that a one-time reduction to a warning does not constitute a fair and adequate administrative remedy.*

Based on this finding, and these recommendations, this case is closed.

If you object to the Ombudsman’s decision to decline or discontinue this investigation or review, you may file a grievance with the Ombudsman as specified in A.M.C.R. 2.60.006.



Darrel W. Hess
Municipal Ombudsman