


OFFICE OF THE GENERAL COUNSEL
COUNCIL OF THE DISTRICT OF COLUMBIA
1350 Pennsylvania Avenue, N.W., Suite 4
Washington, D.C. 20004

Memorandum

TO: Councilmember Carol Schwartz, Chairman
Committee on Public Works and the Environment

FROM: Charlotte Brookins-Hudson, General Counsel 

DATE: January 20, 2004

SUBJECT: Legal interpretation of the Residential Permit Parking Area Amendment Act of 2002

QUESTION:

This is in response to your request, dated January 9, 2004 on whether the provisions of the Residential Permit Parking Area Amendment Act of 2002 render invalid, tickets issued between the hours of 10:00 p.m. and 7:30 a.m., as a result of signage indicating "no parking anytime", in the absence of fire hydrants or metrobus zones, in residential areas.

SHORT ANSWER:

In my opinion, tickets issued based on a "no parking anytime" sign are valid unless they are based upon an underlying violation of the traffic laws and regulations that is exempt from enforcement under the provisions of Residential Permit Parking Area Amendment Act of 2002. A ticket that is issued for parking between 25 and 40 feet from an intersection between the hours of 10:00 p.m. and 7:30 a.m., in a residential zone, is in conflict with the express provisions of the Act, and is thus unenforceable. If the Notice of Infraction cites only a "no parking anytime" zone infraction, the respondent may request a hearing or adjudication by mail to determine if the infraction should be dismissed as exempt under the act.

DISCUSSION:

The Residential Permit Parking Area Amendment Act of 2002,¹ ("act") imposes an overnight moratorium on the issuance of parking tickets for parking in loading zones and entrances, or for parking up to 25 feet from an intersection. The law permits tickets to be issued for parking in

¹D.C. Law 14-167, effective June 28, 2002 (49 DCR 4475).

loading zones used by hotels, and for parking at entrances to hospitals. The law does not impose a moratorium on the issuance of a notice of infraction for any other specified infraction.

The act applies only to vehicles displaying a valid residential permit parking sticker.² Subsection 2412.9 of the Motor Vehicle and Traffic Regulations (18 DCMR), specifically states that a residential permit parking sticker does not "provide an exemption from the observance of any traffic regulation other than the residential permit parking two (2) hour parking limit *and the exemptions listed in §2411.19.*" (Emphasis added) The exemptions listed in subsection 2411.19 are as follows:

- Twenty-five feet (25 ft.) from the intersection;
- In loading zones, except loading zones used by hotels; and
- In entrances, except hospital entrances.

The substantive provisions of the 18 DCMR corresponding to these infractions are §2405.2(c) (25 feet from intersection), 2402.6 (loading zone), and 2406.3, and 2406.4 (entrances to buildings). No signs are required to enforce the 25 foot distance from an intersection violation, or any of the violations listed in section 2405. Those infractions number more than 25 discrete violations, including violations such as parking within an intersection; on a crosswalk; upon any bridge, viaduct, or other elevated structure; on any median strip; in any driveway or alley entrance; within 10 feet of a fire hydrant; within 50 feet of a railroad crossing ; 20 feet of a fire station entrance; or in a fire lane.

The rules governing parking infractions for which a posted sign is required are contained in 18 DCMR § 2406. The provisions of the DCMR cited as authorizing the Department to post a sign stating "No parking anytime" are subsections 2000.4, 4019, and 4038. Subsection 200.4 provides:

2000.4 The driver of any vehicle shall obey the instructions of any *official traffic control device* applicable to the vehicle which has been placed in accordance with the provisions of this subtitle

An official traffic control device is defined as "any sign, signal, marking, or device not inconsistent with this title placed or erected by authority of the Council of the District of Columbia or the Director for the purpose of regulating, warning, or guiding traffic." 18 DCMR § 9901.³ Most of the rulemakings authorizing no parking signs cite to 18 DCMR § 4019.1. That section incorporates by

²18 DCMR § 2411.19.

³The authority to erect parking signs now includes the expedited procedure authorized by the Council in the Administrative Procedure Amendment Act of 2000, effective April 3, 2001 (D.C. Law 13-249; D.C. Official Code § 2-502 (6)(B)). Under this act, the Department is authorized to place parking signs where the proposed installation, modification or removal of the signs is based on engineering or other technical considerations.

reference a listing of the specific locations where the signs imposing no parking restrictions have been placed. The Department is supposed to maintain an index of the rulemakings authorizing specific locations for each designation, requirement, or restriction, and make that information available for review "at the offices of the Department of Public Works." 18 DCMR § 4000.3.

Among the infractions for which "no parking" signs are authorized that would not conflict with the provisions of the act, include enforcement of the 25 foot restriction at intersections (18 DCMR § 2404.6); enforcement of restrictions "on any street when the width of the roadway does not exceed twenty feet (20 ft.) or on one side of any street when the width of the roadway does not exceed thirty feet (30 ft.)." (18 DCMR § 2406.7); and the prohibition of parking within 60 feet of an embassy.

CONCLUSION

Based solely on the scenario that you have posed, a parking ticket issued for a "no parking anytime" infraction between the hours of 10 p.m., and 7:30 a.m., in a residential zone is unenforceable if it is based on parking between 25 and 40 feet from an intersection because that infraction is expressly exempted from enforcement under the Residential Permit Parking Area Amendment Act of 2002. If the underlying infraction is one that is not expressly exempt under 18 DCMR § 2411.19 (as added by the Residential Permit Parking Area Amendment Act of 2002), such as parking on a narrow street, elevated roadway, or within 60 feet of an embassy, the ticket would not be covered by the provision of the act.

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