



CITY OF
PORTLAND, OREGON

HEARINGS OFFICE

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HEARINGS OFFICER'S ORDER

APPEAL OF DAVID JUBB

CASE NO. 1090183

DESCRIPTION OF VEHICLE: Ford F150 (WA B32604D)

DATE OF HEARING: August 13, 2009

APPEARANCES:

Mr. David Jubb, appellant

HEARINGS OFFICER: Mr. Ian Simpson

The Hearings Officer makes this decision based upon Mr. Jubb's testimony, the testimony of his witness, Ragen Cunningham, and the exhibits received into the evidentiary record (Exhibits 1 through and including 15).

The officer's report (Exhibits 5-7) stated that the appellant's vehicle was towed at about 12:30 p.m. on July 25, 2009 because it was parked where a sign was posted that indicated no parking July 25-27, all hours. The sign had been posted the day before, on July 24. The officer provided photographs which showed the appellant's vehicle parked next to the sign.

The appellant testified that he did not see the temporary no parking sign when he parked. Ms. Cunningham testified that right before they parked they had both seen several temporary no parking signs posted along a building's frontage nearby. They took special note of these signs because Mr. Jubb lived in this building. Ms. Cunningham stated that when they parked they both were alert to parking signs. Ms. Cunningham exited the passenger side door very close to where the sign would have been posted, according to the officer's photographs. Ms. Cunningham was certain that she would have seen the sign if it had been present. Mr. Jubb and Ms. Cunningham were certain that the sign must have been posted after they parked.

The Hearings Officer must make a decision based on what is the more probable scenario, based on the evidence in the record, and the burden of proof is on the City. The Hearings Officer finds that there are two reasonably probable scenarios here. The first scenario is that the sign was posted on July 24, was removed before the appellant parked on July 25, and then posted again before the officer arrived on the scene. The second scenario is that neither Mr. Jubb nor Ms. Cunningham saw the sign when they parked. The Hearings Officer finds that usually in this sort of case, it is more probable that an appellant did not see the sign. However, in this case there are two witnesses who did not see the sign, and both witnesses were particularly alert about temporary no parking signs when they parked on that day. The Hearings Officer also found Mr. Jubb and Ms. Cunningham's version of events to be consistent with each other. The Hearings Officer finds that both scenarios are comparably probable. The Hearings Officer finds that the City has not carried its burden of proof, and so the tow is invalid.

16.30.210 When a Vehicle May be Towed.

(Amended by Ordinance Nos. 172788 and 179141, effective March 23, 2005.) A vehicle may be towed and held at the expense of the owner or person entitled to possession thereof from:

A. Any public right-of-way, public park or other public place or property, when:

1. The vehicle is parked in violation of a temporary or permanent parking restriction;

D. Temporary parking restrictions may be enforced by tow 24 hours after placement in any non meter area.

E. Temporary parking restrictions may be enforced by tow if the space reservation device and/or signs are in place by 12:30 p.m. the prior day in any meter district.

16.30.220 Towing Without Prior Notice.

(Amended by Ordinance Nos. 165980, 170912, 176352, and 176442, effective May 1, 2002.) Any authorized officer may, without prior notice, order a vehicle towed, when:

B. The vehicle is illegally parked in a conspicuously posted restricted space, zone, or traffic lane where parking is limited to designated classes of vehicles or is prohibited in excess of a designated time period, or during certain hours, or on designated days, or at any time and place the vehicle is interfering or reasonably likely to interfere with the intended use of such a space, zone, or traffic lane;

The owner or other persons who have an interest in the vehicle are not liable for the towing and/or storage charges. Therefore, it is ordered that the vehicle shall be immediately released, if still held, and any money heretofore paid for towing and/or storage charges shall be returned to the vehicle owner.

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

Dated: August 14, 2009
IS:rs/cb



Ian Simpson, Hearings Officer

Bureau: Parking Enforcement
Tow Number: 14839

Enclosure

If a refund has been authorized, it will be sent from the City's Accounts Payable Office. Please allow at least 3 weeks.

Exhibit #	Description	Submitted by	Disposition
1	Hearing request letter	Jubb, David	Received
2	Tow Desk printout	Hearings Office	Received
3	Hearing Notice	Hearings Office	Received
4	Tow Hearings Process Info. sheet	Hearings Office	Received
5	Tow Hearing Report	Parking Enforcement	Received
6	Permit to Use Dedicated Street Area	Parking Enforcement	Received
7	Parking Citation and Photos	Parking Enforcement	Received
8	Photos	Jubb, David	Received
9	Tow Invoice	Jubb, David	Received
10	Parking Violation	Jubb, David	Received
11	FedEx receipt	Jubb, David	Received
12	Certified Mail Receipt	Jubb, David	Received
13	Parking receipt	Jubb, David	Received
14	Towing receipt	Jubb, David	Received
15	List of Items to be Resolved	Jubb, David	Received