



CITY OF
PORTLAND, OREGON
OFFICE OF THE CITY AUDITOR
Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF JAMES GALLUZZO

CASE NO. 1100098

DESCRIPTION OF VEHICLE: Ford Focus (OR 928BTN)

DATE OF HEARING: June 17, 2010

APPEARANCES:

Mr. James Galluzzo, Appellant

HEARINGS OFFICER: Ms. Christina A. Austin-Smith

Mr. James Galluzzo appeared at the hearing and testified on his 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 Mr. Galluzzo and the documents admitted into evidence (Exhibits 1 through and including 7).

Summary of Evidence:

Mr. Galluzzo submitted a letter of explanation (Exhibit 1) and photo (Exhibit 3), and testified on his own behalf at the hearing. Mr. Galluzzo explained that on Friday, June 4, 2010, he was taking his nieces to dinner downtown and parked around 7:30 p.m. in a space that indicated no parking from 7 a.m. until 7 p.m. Monday through Saturday for a loading zone. Since it was after 7 p.m., Mr. Galluzzo testified he believed it was okay to park in that space. Mr. Galluzzo testified that when he returned from dinner around 10:15 p.m. his vehicle was gone. Mr. Galluzzo reports talking to a Sgt. Peter Simpson, a Portland Police officer, who did not have personal knowledge about Mr. Galluzzo's vehicle, but did tell him that in the past in that location he has seen the nearby parking lot post a sign that blocks a portion of the City's parking signage. He recommended Mr. Galluzzo take a picture of the sign. Mr. Galluzzo had a picture taken that night, which he submitted as Exhibit 3. This photo shows a parking garage's sign resting against a City sign that indicates a loading zone during the time Mr. Galluzzo stated above. There is no other signage visible behind the parking garage sign. Mr. Galluzzo testified that upon closer inspection, behind that sign, is another city parking prohibition, which prohibits parking from 6 p.m. until 12 a.m. He testified that upon driving by this spot the next day, the parking garage sign was gone and you could clearly read this additional parking prohibition, but under oath he reasserted this portion of the sign was not visible when he parked that evening.

Officer Allison Lance, Portland Police Bureau, ordered the tow and an investigation report was filed by the Portland Police Bureau, Exhibit 7. In this report officer Lance writes: "The above listed Ford was parked on the Northeast corner of SW 2/Pine. It was parked in a marked 'No Parking 6 p.m. - 12 a.m.' zone. It was towed by Security Towing to their lot." The report indicates the vehicle was cited at 8:59 p.m.

Applicable Law:

The Hearings Officer must find a tow is valid if the person ordering the tow followed the relevant laws/rules. In this case, the relevant laws/rules can be found in the Portland City Code (“PCC”) Title 16. PCC 16.20.205C states “a sign which prohibits parking during certain hours or days such as ‘No Parking 7 a.m. to 9 a.m. Monday through Friday’ or ‘Truck Loading Zone 7 a.m. to 6 p.m. Monday through Friday’ is in effect during the days and times shown on the sign, excluding City recognized holidays.” PCC 16.30.210A1 permits a vehicle to be towed when in violation of a permanent parking restriction. PCC 16.30.220B permits a tow without prior notice when the vehicle is illegally parked in a conspicuously posted restricted zone.

Findings of Fact and Conclusions of Law:

The Hearings Officer finds that in fact Mr. Galluzzo did park his vehicle in a spot that prohibited parking from 6 p.m. until 12 a.m. The Hearings Officer also finds that on June 4, 2010, at 8:59 p.m., Mr. Galluzzo’s vehicle was located in a prohibited spot, in violation of a prohibited permanent parking restriction. However, the Hearings Officer finds, based on the photo submitted by Mr. Galluzzo, and his credible and sincere testimony, that a tow without prior notice in this case was not permitted, because under these specific circumstances, it was not a “conspicuously posted restricted zone.” The Hearings Officer finds that the signage indicating this specific parking restriction was completely obscured by a parking garage’s placement of a large sign and was therefore not conspicuously marked. Absent any other evidence indicating that the signage at Exhibit 3 was not in that location when Mr. Galluzzo parked at 7:30 p.m., the Hearings Officer finds based on the facts of this case on this evening, it was not a conspicuously posted space.

Order:

Therefore, the Hearings Officer finds that 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: June 18, 2010
CAAS:rs



Christina A. Austin-Smith, Hearings Officer

Enclosure

Bureau: Police
Tow Number: 10074

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	Galluzzo, James	Received
2	Tow Invoice	Galluzzo, James	Received
3	Photo	Galluzzo, James	Received
4	Tow Desk printout	Hearings Office	Received
5	Hearing Notice	Hearings Office	Received
6	Tow Hearings Process Info. sheet	Hearings Office	Received
7	Investigation Report	Police Records	Received