



# CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

## Hearings Office

1900 SW 4<sup>th</sup> Avenue, Room 3100

Portland, OR 97201

phone: (503) 823-7307 - fax: (503) 823-4347

web: [www.portlandoregon.gov/auditor/hearings](http://www.portlandoregon.gov/auditor/hearings)



## HEARINGS OFFICER'S ORDER

APPEAL OF JAMIE BENNETT

CASE NO. 1130039

DESCRIPTION OF VEHICLE: Audi A4 (OR 532EGR)

DATE OF HEARING: March 12, 2013

APPEARANCES:

Ms. Jamie Bennett, Appellant

HEARINGS OFFICER: Ms. Kimberly M. Graves

Ms. Bennett ("Bennett") 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. Bennett and the documents admitted into evidence (Exhibits 1 through and including 11).

### Summary of Evidence:

Bennett submitted a Tow Hearing Request Form, Exhibit 1, a type-written letter, Exhibit 2, and photos, Exhibit 3, regarding the tow of her vehicle on February 22, 2013. Bennett writes in Exhibit 2 that it was approximately 8:00 p.m. when she parked her vehicle on "SW 3<sup>rd</sup> Ave directly between Everett and Davis." The Hearings Officer notes that Everett and Davis are streets located in the NW section of the City of Portland, not the SW section. The Hearings Officer believes that the use of SW is in error and that Bennett's vehicle was parked on NW 3<sup>rd</sup> Ave. Bennett writes that she inspected the area around her vehicle for lines and signage and found no indication that she was not permitted to park at 8:00 p.m. Bennett writes that there was a no parking sign near her vehicle, but it indicated that parking was prohibited from 7 a.m. to 6 p.m. Monday through Friday. Bennett writes that she returned just before midnight and found that the vehicle was gone, and the street was barricaded. Bennett writes that an officer pointed out a sign at the end of the block which "looked like any other sign." Bennett writes that she didn't think to look at the sign because of the location and the angle it was posted. Bennett writes that she used the available information and parked believing that it was "okay" to park where she did. Bennett included 3 photos of the area where the vehicle was parked prior to towing. The photos sent via facsimile are very dark, and the landmarks and signage in the photo are unidentifiable. Bennett appeared at the hearing and reiterated the information contained in Exhibit 2. Bennett also submitted additional photos and a witness statement for the Hearings Officer's consideration. The witness statement, Exhibit 10, from Mr. Dunlap indicates that Mr. Dunlap

believes that the signage for the area is improperly posted, and that the signage needs to be changed to avoid towing of vehicles. The additional photos, Exhibit 11, show a Pay to Park sign and a Truck Loading Zone sign posted together on one post. Bennett testified that the signs shown in the photos were the closest signs to her vehicle. Bennett submitted another photo where she has marked where her vehicle was parked prior to towing. The vehicle was parked in the second parking space from the corner of NW 3<sup>rd</sup> and NW Davis.

The city submitted Exhibits 7 through, and including, 9 regarding the tow of Bennett's vehicle. Exhibit 7 is a Tow Hearing Report indicating that the vehicle was towed on February 22, 2013 from the west side of NW 3<sup>rd</sup> between Everett and NW Davis. The report indicates that the vehicle was towed because it was parked in violation of a "prohibited time" restriction. The narrative portion of the report indicates that the vehicle was parked "between two prohibited time zone signs." The report indicates that the streets are closed during the prohibited time hours. Exhibit 8 is a copy of the citation issued to Bennett when the vehicle was towed. The citation contains the same date, time and location as Exhibit 7. Exhibit 9 contains four photos related to the tow of Bennett's vehicle. The photos taken collectively show that Bennett's vehicle was parked between two prohibited time parking signs. The sign to the rear of Bennett's vehicle appears to be approximately two vehicle lengths away, while the sign to the front appears to be approximately one vehicle length away.

During the hearing, after reviewing the documents submitted by the city, Bennett was insistent that there are only two prohibited time parking signs on the block where she parked. Bennett indicated that there are signs at each end of the block, but not in the middle of the block. The Hearings Officer indicated that viewing the location where the vehicle was parked prior to towing may be helpful. Bennett indicated that she wished the Hearings Officer to visit the location of the tow before rendering a decision in the case. Following the hearing, the Hearings Officer drove to the location. The Hearings Officer approached the location from the south on 4<sup>th</sup> Ave. The Hearings Officer turned from NW 4<sup>th</sup> Ave to NW Everett heading east. The Hearings Officer then turned from NW Everett to NW 3<sup>rd</sup> southbound. Upon turning onto NW 3<sup>rd</sup> Ave, the Hearing Office immediately noticed a prohibited time parking sign on the northwest corner of the block. The Hearings Officer noted that the sign was approximately 6 feet off of the ground, and contained a single arrow pointing south. Proceeding south, the Hearings Officer noticed a second sign in the middle of the block listing the same prohibited time restriction and containing an arrow pointing both north and south. Continuing south, the Hearings Officer noticed a third sign on the block which listed the same restriction and contained a single arrow which pointed north. The third sign was located on the southwest corner of the block. The Hearings Officer notes that the signs on the block are posted on red light posts, as can be seen in the photos from parking enforcement. The Hearings Officer notes that Bennett's vehicle was parked approximately 1 vehicle length from the southernmost sign, and 2 vehicle lengths from the sign posted mid-block. The Hearings Officer found the three signs on the block to be conspicuously posted.

#### **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 provides that signs which prohibit parking during certain hours or days are in effect during the days and times shown on the sign, excluding City recognized holidays. PCC 16.30.210A1 provides that a vehicle may be towed and held at the expense of the owner from any public right-of-way when the vehicle is parked in violation of a permanent parking restriction. PCC 16.30.220B permits any authorized officer to tow a vehicle without prior notice when the vehicle is illegally parked in a conspicuously posted restricted space, zone, or traffic lane.

#### **Findings of Fact and Conclusions of Law:**

The Hearings Officer finds that on February 22, 2013 Bennett parked her vehicle near NW 3<sup>rd</sup> and NW Davis in an area which is subject to a permanent parking restriction. The Hearings Officer finds that Bennett's vehicle was parked on the public right-of-way during the restricted time listed on the signage for the area. The Hearings Officer finds that the signage for the area is conspicuously posted. The Hearings Officer finds that the officer

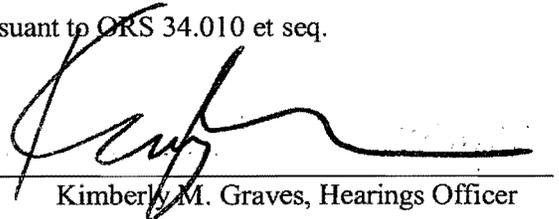
who ordered the tow of Bennett's vehicle followed all of the relevant rules when making that order. The Hearings Officer finds the tow of Bennett's vehicle is valid.

**Order:**

Therefore, it is ordered that all towing and storage charges against the vehicle, and an administrative fee, if applicable, shall remain the responsibility of the appellant.

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

Dated: March 14, 2013  
KMG:c2/ml



Kimberly M. Graves, Hearings Officer

Enclosure

Bureau: Parking Enforcement  
Tow Number: 3092

<b>Exhibit #</b>	<b>Description</b>	<b>Submitted by</b>	<b>Disposition</b>
1	Tow Hearing Request Form	Bennett, Jamie	Received
2	Letter	Bennett, Jamie	Received
3	Photos	Bennett, Jamie	Received
4	Tow Desk printout	Hearings Office	Received
5	Notice of Hearing	Hearings Office	Received
6	Statement of Rights and Procedures	Hearings Office	Received
7	Tow Hearing Report	Parking Enforcement	Received
8	Parking Violation #HA11443680	Parking Enforcement	Received
9	Photos	Parking Enforcement	Received
10	3/10/13 letter from Eric M. Dunlap	Bennett, Jamie	Received
11	Photos	Bennett, Jamie	Received