



CITY OF
PORTLAND, OREGON
HEARINGS OFFICE

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HEARINGS OFFICER'S ORDER

APPEAL OF BARBARA O'HARE

CASE NO. 1080287

DESCRIPTION OF VEHICLE: Hyundai SON (OR CU17603)

DATE OF HEARING: October 7, 2008

APPEARANCES:

Ms. Barbara O'Hare, appellant

Road Supervisor Annie Duncan, for TriMet

HEARINGS OFFICER: Mr. Ian Simpson

The Hearings Officer, on substantial evidence and based upon the record as a whole and receiving Exhibits 1 through 9 and 11 through 19 into the record without objection, finds as follows:

Exhibit 10 is a compact disk containing the recorded voice of the TriMet personnel who called in the tow of the appellant's vehicle. The appellant did not review this exhibit before the October 7, 2008 hearing, and the Hearings Officer finds that it contains information that is duplicative of other information in the record. Therefore, the Hearings Officer rejected Exhibit 10.

Annie Duncan, TriMet Road Supervisor, ordered the appellant's vehicle towed. Ms. Duncan provided a report (Exhibits 8, 9 and 11) and spoke at the hearing. Ms. Duncan indicated that the appellant's vehicle was parked in the middle of a Bus zone. Two signs were posted about 110 feet apart, one at each end of the zone. Ms. Duncan stated that a sign normally in the middle of the zone had been removed leaving an empty pole, but she believed that the signs on each end of the zone provided sufficient notice. A Pay to Park machine was present in the middle of the Bus zone, near the Bus zone sign that had been removed.

The appellant stated that she parked near the Pay to Park machine. She thought parking near the Pay to Park machine was allowed. There was no Bus zone sign posted near where she parked, and she saw no yellow curb to indicate a No Parking zone where she parked.

The City Code requires that signs be 'conspicuously' posted, to provide a driver with adequate notice of a restricted zone. In this case, the two Bus zone signs present were some distance from where the appellant parked. The presence of the Pay to Park machine reasonably suggested to the appellant that she could park near it. From examining the photographs Ms. Duncan and the appellant both provided (Exhibits 11 and 16, respectively), the Hearings Officer saw that some portions of the curb had yellow striping. The appellant parked between two curb areas clearly marked yellow. But there was only some faded remnant of yellow on

the curb where the appellant parked, which did not provide adequate notice of a No Parking zone. Given the lack of any Bus zone sign near where the appellant parked, the presence of the Pay to Park machine, and the lack of a clearly marked yellow curb, the Hearings Officer finds that the appellant did not receive sufficient notice that she was not allowed to park where she did.

Given these circumstances, this was an invalid tow. Please note the relevant City Code sections below concerning this matter.

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;

B. Permanent parking restrictions may be enforced by tow 24 hours after placement in any meter or non meter areas.

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: October 9, 2008
IS: cb



Ian Simpson, Hearings Officer

Bureau: TriMet
Tow Number: 24732

Enclosure

If a refund has been authorized, it will be sent from the City's Accounts Payable Office. Please allow at least 2 weeks.

Exhibit #	Description	Submitted by	Disposition
1	Letter	O'Hare, Barbara	Received
2	Copy of business card for Security Towing	O'Hare, Barbara	Received
3	Tow receipt	O'Hare, Barbara	Received
4	Tow desk report	Hearings Office	Received
5	Hearing notice	Hearings Office	Received
6	Tow hearing info. sheet	Hearings Office	Received
7	Fax confirmation to Turner	Hearings Office	Received
8	Copy of email report from Annie Larson-Duncan to Turner	TriMet - Anna Turner	Received
9	Hand-drawn diagram	TriMet - Anna Turner	Received
10	CD labeled "audio of tow request"	TriMet - Anna Turner	Rejected
11	Photos (17 on half sheets of paper)	TriMet - Anna Turner	Received
12	Request to reschedule	O'Hare, Barbara	Received
13	Hearing Notice	Hearings Office	Received
14	Letter	O'Hare, Barbara	Received
15	Copy of email from "Corona Ramon" to appellant	O'Hare, Barbara	Received
16	8 1/2 x 11 copies of photos (3)	O'Hare, Barbara	Received
17	Letter from Edwina Wasson	O'Hare, Barbara	Received
18	Submittal from Edwina Wasson (duplicate of Exh. 17?)	O'Hare, Barbara	Received
19	Email from Ramon Carona (duplicate of Exh. 15)	O'Hare, Barbara	Received