



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

LaVonne Griffin-Valade, City Auditor
1900 SW 4th Avenue, Room 3100
Portland, Oregon 97201
Telephone: (503) 823-7307
Fax: (503) 823-4347
TDD: (503) 823-6868
www.portlandonline.com/auditor/hearings

HEARINGS OFFICER'S ORDER

APPEAL OF MOLLIE BATES

CASE NO. 1090250

DESCRIPTION OF VEHICLE: Honda Civic (OR YXJ592)

DATE OF HEARING: November 24, 2009

APPEARANCES:

Ms. Mollie Bates, Appellant

HEARINGS OFFICER: Mr. Gregory J. Frank

Ms. Bates appeared and testified at the hearing on her own behalf. The Hearings Officer makes this decision based upon the testimony of Ms. Bates and the documents admitted into the evidentiary record (Exhibits 1 through and including 7).

Ms. Bates testified that on the evening her vehicle was towed she drove to Powell's Books and parked directly in front of the Ten 01 Restaurant. Ms. Bates stated she was really careful where she parked her vehicle because the first space at the corner is clearly marked as reserved for valet parking. Ms. Bates stated that she noted a "Pay to Park" sign (end time to pay 7:00 PM on Wednesday). Ms. Bates stated that the post with the "Pay to Park" sign had bicycles locked to it. Ms. Bates stated that the bicycles obscured another sign below the "Pay to Park" sign, which it turned out to be a sign restricting parking from 6 PM to 12 AM all days. Ms. Bates noted that the parking patrol officer mistakenly/incorrectly referenced her vehicle's license number on the "citation." Ms. Bates also noted that the sign restricting parking from 6 PM to 12 AM was not, as stated on the citation, clearly marked as a tow-zone.

The Parking Enforcement Officer who ordered Ms. Bates vehicle towed submitted a "Tow Hearing Report" (Exhibit 5). In the narrative section of Exhibit 5, the Parking Enforcement Officer states "I received a SR for a vehicle in a pro time. The veh info was received correctly but I made a mistake when issuing the citation. The veh was in the zone when I arrived and the signs are clearly posted and not blocked as indicated by my pic's. I issued the cite and called for tow to compete the SR."

The Parking Enforcement Officer also submitted pictures taken at the time the tow of Ms. Bates vehicle was ordered (Exhibit 6). The pictures on Exhibit 6 display a vehicle with the license number of Ms. Bates vehicle. The pictures on Exhibit 6 also show the sign referenced by both Ms. Bates and the Parking Enforcement Officer. At least two of the pictures on Exhibit 6 show a bicycle attached to the post that holds the "Pay to Park" sign and the sign restricting parking from 6 PM to 12 AM.

Ms. Bates testified that the bicycle that obscured her view of the sign restricting parking from 6 PM to 12 AM must have moved from the time she parked and the time the Parking Enforcement Officer arrived and took pictures. Ms. Bates also submitted pictures taken after her vehicle had been towed (Exhibits 1 and 7).

The Hearings Officer shall find a tow valid if the Hearings Officer finds that the person ordering the vehicle towed followed the relevant laws/rules. In this case the relevant laws/rules are found in Title 16 of the Portland City Code ("PCC"). PCC 16.30.200 A states that a vehicle may be towed and held at the expense of the owner if the vehicle is parked in violation of a temporary or permanent parking restriction. PCC 16.30.220 B states that a vehicle may be towed, without prior notice to the vehicle owner, if the vehicle is illegally parked in a conspicuously posted restricted space or zone.

The Hearings Officer finds the post located in front of the location where Ms. Bates parked her vehicle on November 4, 2009 was clearly and conspicuously posted as a "Pay to Park" location for certain hours and a no parking zone for certain hours. The Hearings Officer finds that a bicycle may have been locked on the post holding the above-referenced signs and that the bicycle may have partially obscured the sign restricting parking between the hours of 6 PM and 12 AM. However, the Hearings Officer finds that the location where Ms. Bates parked her vehicle on November 4, 2009 was immediately behind the post holding the parking signs and that even if a bicycle was locked so as to partially obscure the restrictive parking sign, at least the top portion of the sign was clear and unobstructed. The Hearings Officer finds that at least the portion of the sign, indicating a capital "P" with a diagonal line through it and a circle around it, was clearly visible. The Hearings Officer relied heavily upon the photos (Exhibits 1, 6 and 7) which shows a bicycle locked on the far side of the post to indicate the effect of a bicycle locked on the near side of the post. The Hearings Officer finds that the close proximity of Ms. Bates vehicle to the sign and the limited obscuring of the sign by a bicycle impose an obligation upon Ms. Bates to take notice of the parking restrictions on the sign. The Hearings Officer finds, based upon the evidence in the record, that the sign restricting parking from 6 PM to 12 AM was conspicuously posted.

The Hearings Officer finds that the Parking Enforcement Officer followed all relevant laws/rules. The Hearings Officer finds that tow of Ms. Bates vehicle on November 4, 2009 is valid.

It is ordered that all towing and storage charges against the vehicle shall remain the responsibility of the vehicle's owner.

The Hearings Officer takes this opportunity to agree with Ms. Bates that the City should take efforts to keep items from being attached to posts or other structures that hold parking restriction signs if the item (i.e. bicycles) obscures, even partially, the sign.

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

Dated: November 25, 2009
GJF:rs



Gregory J. Frank, Hearings Officer

Bureau: Parking Enforcement
Tow Number: 21920

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Hearing request letter	Bates, Mollie	<u>Received</u>
2	Tow Desk printout	Hearings Office	<u>Received</u>
3	Hearing Notice	Hearings Office	<u>Received</u>
4	Tow Hearings Process Info. sheet	Hearings Office	<u>Received</u>
5	Tow Hearing Report	Parking Enforcement	<u>Received</u>
6	Parking Violation and photos	Parking Enforcement	<u>Received</u>
7	Letter & photos	Bates, Mollie	<u>Received</u>