

CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF DAVID BENEFIEL

CASE NO. 1100185

DESCRIPTION OF VEHICLE: Jeep Wrangler (WA 036WTJ)

DATE OF HEARING: December 14, 2010

APPEARANCES:

Mr. David William Benefiel, Appellant

Officer Ken Swails, on behalf of Parking Enforcement

HEARINGS OFFICER: Ms. Kimberly M. Graves

Mr. David Benefiel appeared at the hearing and testified on his own behalf. Officer Ken Swails 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. Benefiel and the documents admitted into evidence (Exhibits 1 through and including 6). At the conclusion of the hearing, Mr. Benefiel submitted Exhibit 7, a copy of his tow receipt, which this Hearings Officer makes part of the record with this order.

Summary of Evidence:

Mr. Benefiel submitted a handwritten request, Exhibit 1, for a hearing regarding the tow of his vehicle on Monday, December 6, 2010. Mr. Benefiel testified consistent with his written request and indicated that he parked his vehicle on Sunday, December 5, 2010 on NW Savier and noted a temporary no parking sign next to his vehicle which read "No Parking 7:30 a.m.-10:00 a.m. Wednesday." Mr. Benefiel testified that he did not have notice that parking was restricted on Monday. Additionally, Mr. Benefiel testified that the citation which he received, Exhibit 6, reads in the "sign detail" section "No Parking 7:30 a.m. to 10:00 a.m. Wed."

The City submitted Exhibits 5 and 6 for the Hearings Officer's consideration. Additionally, Officer Ken Swails testified on behalf of the City. Officer Swails testified that Mr. Benefiel's vehicle was towed on a day in which the streets of NW Portland were being swept. Officer Swails testified that prior to the sweep, a number of people are involved with setting up No Parking signs in the area. Officer Swails indicated that signs are arranged according to the day of the week, and indicate that parking is restricted between 7:30 a.m. and 10:00 a.m. on either Monday, Wednesday or Friday depending on the area. Officer Swails testified that each block in the designated area will have 5 signs posted regarding the parking restriction. Officer Swails testified that the signs for the area that was swept on Monday, December 6, 2010 were verified twice prior to the sweep occurring. Officer Swails testified that he ordered the tow of Mr. Benefiel's vehicle and verified that the sign read "No

Parking 7:30 a.m.-10:00 a.m. Monday" prior to ordering the tow. With regard to the writing in the "sign detail" section of the citation issued to Mr. Benefiel, Officer Swails testified that he had preprogrammed his citation machine, as a test, to print the sign detail information that appeared on Mr. Benefiel's citation. Officer Swails testified that he failed to clear out the test information prior to issuing the citation and therefore the citation read "Wed." even though the sign actually read "Monday." Officer Swails testified that photos are not typically taken during a "sweep" because of time constraints.

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 16.30.210A1 provides that a vehicle may be towed from a public right-of-way when it is parked in violation of a temporary or permanent parking restriction. PCC 16.30.210D reads that temporary parking restrictions may be enforced by tow 24 hours after placement in any non meter area. PCC 16.30.220 allows for the tow of a vehicle without prior notice when the vehicle is illegally parked in a conspicuously posted restricted zone.

Findings of Fact and Conclusions of Law:

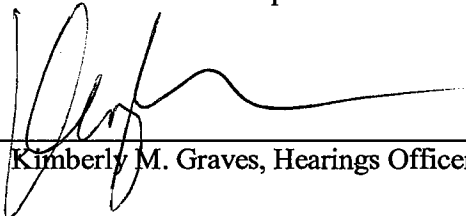
The Hearings Officer finds that on December 5, 2010, Mr. Benefiel parked his vehicle on NW Savier, a public right-of way. The Hearings Officer finds that the area was posted as a temporary no parking zone between 7:30 a.m. and 10:00 a.m. for street sweeping. The Hearings Officer finds Mr. Benefiel to be credible in his belief that the sign restricting parking where his vehicle was located read that parking was restricted on "Wednesday." The Hearings Officer finds that on December 6, 2010, Mr. Benefiel's vehicle was ordered towed by Officer Swails for being in violation of a temporary parking restriction. The Hearings Officer finds Officer Swails to be credible in his belief that the sign restricting parking where Mr. Benefiel's vehicle was parked read that parking was restricted on "Monday." The Hearings Officer finds no physical evidence to prove which day of the week was written on the sign posted next to Mr. Benefiel's vehicle. The burden lies with the City to prove by a preponderance of the evidence that the tow of a vehicle is valid. A tow of a vehicle under PCC 16.30.210D requires that 24 hour notice be provided prior to enforcement of a temporary parking restriction. Without any additional evidence regarding the language written on the temporary no parking sign, this Hearings Officer finds that the City has not met its burden to demonstrate that 24 hours notice was provided prior to the tow of Mr. Benefiel's vehicle. Accordingly, the tow of Mr. Benefiel's vehicle is invalid.

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: December 15, 2010
KMG:rs



Kimberly M. Graves, Hearings Officer

Enclosure

Bureau: Parking Enforcement
Tow Number: 22190

Exhibit #	Description	Submitted by	Disposition
1	Hearing request form	Benefiel, David	<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	Parking Enforcement	<u>Received</u>
7	Tow Invoice	Benefiel, David	