



CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF CLIFFORD L. SMITH

CASE NO. 1120058

DESCRIPTION OF VEHICLE: Toyota Corolla (OR 897AHX)

DATE OF HEARING: April 19, 2012

APPEARANCES:

Mr. Clifford Smith, Appellant

HEARINGS OFFICER: Ms. Kimberly M. Graves

Mr. Smith 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. Smith and the documents admitted into evidence (Exhibits 1 through and including 7).

Summary of Evidence:

Mr. Smith submitted a Tow Hearing Request Form, Exhibit 1, regarding the tow of his vehicle on March 26, 2012, from SE Division. Mr. Smith writes in Exhibit 1 that he was driving west on SE Division and turned left into the driveway for the "bike shop." Mr. Smith writes that he then backed out and parked "exactly where the white toyota was 're-parked' having never seen the posted sign." Mr. Smith writes that the sign was posted 8 feet up on the utility pole above many posters and was not visible from where the car was parked. Mr. Smith indicated that there was another sign 25-30 feet in front of the car also on a utility pole. Mr. Smith included photos, Exhibit 1a, to illustrate the area where his vehicle was parked. Mr. Smith appeared at the hearing and testified consistent with his written statement in Exhibit 1. Mr. Smith added that he turned around in the driveway and therefore did not see the posted signs.

The city submitted Exhibits 5 through, and including, 7 regarding the tow of Mr. Smith vehicle. Exhibit 5 is a Tow Hearing Report indicating that the Smith vehicle was towed on March 26, 2012 at approximately 4:30 p.m. The narrative portion of the report indicates that the vehicle was cited and towed as part of the daily routine patrol of the area. The report indicates that there are "multiple signs per blockface from 10th Ave. to 28th Ave. on the south side." Exhibit 6 is a copy of the citation issued to Mr. Smith when his vehicle was towed. Exhibit 7 contains four photos of the area where the Smith vehicle was parked. The photos show a No Parking sign indicating that parking is prohibited between 4p-6p Monday through Friday. The upper left photo shows that the Smith vehicle is parked approximately 3-4 car lengths past the no parking sign.

The Hearings Officer concluded that a site view would be helpful in determining whether the signage on the block was conspicuously posted. The Hearings Officer conducted a site view of the location on April 20, 2012. In conducting the site view, the Hearings Officer drove both East and West on Division Street between approximately 19th and 24th. The Hearings Officer noted that all of the blocks in the area contain signage indicating that parking is prohibited during certain hours. The Hearings Officer noted that the signs can be found on designated posts, and on telephone/light posts. The Hearings Officer noted that each block contains at least 3 visible signs, while some blocks appear to contain more than 3 signs. The Hearings Officer also noted that the turn Mr. Smith described making was an illegal turn, and did likely limit his ability to see the posted signage.

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. 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.

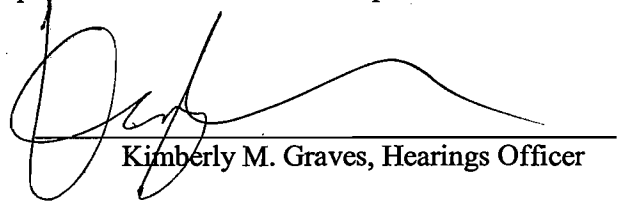
Findings of Fact and Conclusions of Law:

The Hearings Officer finds that on March 26, 2012, at approximately 4:30 p.m., Mr. Smith’s vehicle was parked on SE Division Street in an area which had a permanent parking restriction prohibiting parking between 4:00 p.m. and 6:00 p.m. The Hearings Officer finds that the zone was conspicuously posted with three signs on the block face, and that such signs would be visible to a driver following the driving rules on the roadway. The Hearings Officer finds the tow of Mr. Smith’s vehicle to be valid.

Order:

Therefore, it is ordered that all towing and storage charges against the vehicle shall remain the responsibility of the vehicle’s owner.

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



Kimberly M. Graves, Hearings Officer

Dated: May 8, 2012

KMG:rs

Enclosure

Bureau: Parking Enforcement
Tow Number: 5093

Exhibit #	Description	Submitted by	Disposition
1	Tow Hearing Request Form	Smith, Clifford L.	Received
1a	Photos	Smith, Clifford L.	Received
2	Tow Desk printout	Hearings Office	Received
3	Hearing Notice	Hearings Office	Received
4	Notice of Rights and Procedures	Hearings Office	Received
5	Tow Hearing Report	Parking Enforcement	Received
6	Parking Violation #HA10883766	Parking Enforcement	Received
7	Photos	Parking Enforcement	Received