



CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF SHANE KENNEDY

CASE NO. 1120107

DESCRIPTION OF VEHICLE: Pontiac Grand Am (OR DXNK)

DATE OF HEARING: June 21, 2012

APPEARANCES:

Mr. Shane Kennedy, Appellant

HEARINGS OFFICER: Ms. Kimberly M. Graves

Mr. Kennedy 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. Kennedy and the documents admitted into evidence (Exhibits 1 through and including 8).

Summary of Evidence:

Mr. Kennedy submitted a Tow Hearing Request Form, Exhibit 1, and a typewritten letter, Exhibit 1a, regarding the tow of his vehicle on June 1, 2012 from NW 22nd Avenue between Davis and Everett. In his letter, Mr. Kennedy indicates that there was a "naked No Parking sign" next to where he parked his vehicle. Mr. Kennedy indicates that he did not see anything on the sign to indicate that it was placed by the City of Portland, and he believed that the sign was likely placed by a neighbor in the area. Mr. Kennedy writes that he has applied for City permits himself and that the bags that he has been provided list a specific date and time when the space is reserved. Mr. Kennedy writes that the sign next to his vehicle did not list a specific day, or location. Mr. Kennedy appeared at the hearing and testified that his concern is that the sign next to his vehicle did not have a date on it or any type of insignia from the City to indicate that it was an authorized City sign. Mr. Kennedy referred to PCC section 16.90.375 and pointed out that the section reads "all signs . . . consistent with this Title." Mr. Kennedy questioned whether a sign placed by the City is required to have some identifying information on it that shows that it was lawfully placed. Without an insignia from the City, Mr. Kennedy testified that a driver is left in the dark about whether a sign is authorized or not, and whether his vehicle may be at risk of being towed.

The City submitted Exhibits 6 through, and including, 8 regarding the tow of Mr. Kennedy's vehicle on June 1, 2012 from NW 22nd Avenue. Exhibit 6 is a Tow Hearing Report submitted by the Office of Transportation Parking Enforcement Division. The report indicates that Mr. Kennedy's vehicle was towed on June 1, 2012 at

10:00 a.m. for parking in a temporary no parking zone. The report indicates that barricades were verified in the zone on May 30, 2012 at 1:58 p.m. The narrative portion of the report indicates that the barricade was placed by the City and verified by Parking Enforcement. The report also indicates that there were multiple signs with "orange stretchy tape" between them. Exhibit 7 is a copy of the citation issued to Mr. Kennedy on June 1, 2012. Exhibit 8 contains four photos related to the tow of Mr. Kennedy's vehicle. The photos show a No Parking sign attached to a sawhorse which reads No Parking 7AM to 6PM Monday thru Friday. The sign can be seen next to the passenger side of Mr. Kennedy's vehicle.

The Hearings Officer, at the hearing, indicated that she was unaware of any regulation within the Portland City Code which would require a temporary No Parking sign to contain an insignia of the City in order to be enforceable. The Hearings Officer indicated that she would look at the code prior to issuing an opinion in this case, in the event that there was such a regulation. The Hearings Officer looked at the code and was unable to find any regulation addressing the information which must be on a temporary No Parking sign in order for it to be valid.

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. The specific sections of PCC Title 16 that are relevant to this case are found in PCC 16.30.210 A.1, PCC 16.30.210 D, and PCC 16.30.220 B. PCC 16.30.210 A.1 authorizes a Parking Enforcement Officer to order a vehicle towed and stored, at the owner's expense, if the vehicle is parked in any public right-of-way and the vehicle is parked in violation of any temporary or permanent parking restriction. PCC 16.30.210 D states that temporary parking restrictions may be enforced by tow 24 hours after placement in any non meter area. PCC 16.30.220 B permits a Parking Enforcement Officer to order a vehicle towed, without prior notice, if the vehicle is illegally parked in a conspicuously posted restricted space/zone.

Findings of Fact and Conclusions of Law:

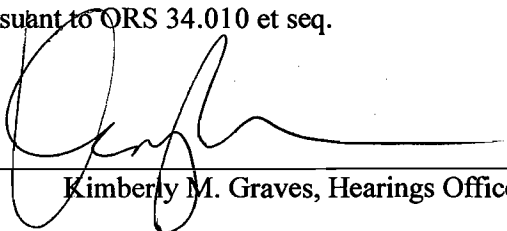
The Hearings Officer finds that that on May 30, 2012, Mr. Kennedy's vehicle was parked on NW 22nd in an area which was subject to a temporary no parking restriction. The Hearings Officer finds that temporary No Parking signs were placed and verified in the area on May 30, 2012, greater than 24 hours prior to the tow of Mr. Kennedy's vehicle. The Hearings Officer finds that the signs were conspicuously posted, and the tow of Mr. Kennedy's vehicle is 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.

Dated: June 25, 2012
KMG:c1



Kimberly M. Graves, Hearings Officer

Enclosure

Bureau: Parking Enforcement
Tow Number: 8794

Exhibit #	Description	Submitted by	Disposition
1	Tow Hearing Request Form	Kennedy, Shane	Received
1a	Letter	Kennedy, Shane	Received
2	Tow Invoice and Parking Violation	Kennedy, Shane	Received
3	Tow Desk printout	Hearings Office	Received
4	Hearing Notice	Hearings Office	Received
5	Statement of Rights	Hearings Office	Received
6	Tow Hearing Report	Parking Enforcement	Received
7	Parking Violation #HA09127958	Parking Enforcement	Received
8	Photos	Parking Enforcement	Received