



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

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HEARINGS OFFICER'S ORDER

APPEAL OF DONALD LEE UDELL

CASE NO. 1090280

DESCRIPTION OF VEHICLE: GMC Sonoma (OR UJG546)

DATE OF HEARING: January 7, 2010

APPEARANCES:

Mr. Donald Udell, Representing Mr. Donald Lee Udell

HEARINGS OFFICER: Mr. Gregory J. Frank

Mr. Donald Joseph Udell appeared at the hearing as the representative of Mr. Donald Lee Udell, the owner of the vehicle. Mr. Donald Joseph Udell offered testimony at the hearing. The Hearings Officer makes this decision based upon the testimony of Mr. Donald Joseph Udell and the documents admitted into the evidentiary record (Exhibits 1 through and including 7). Mr. Donald Joseph Udell expressed disagreement with the accuracy and relevance of Exhibit 7 (photos). The Hearings Officer did admit Exhibit 7 but agreed with Mr. Donald Joseph Udell that the photo showing a sign could not be definitively and absolutely tied in with the photo of Mr. Donald Lee Udell's vehicle.

Mr. Donald Joseph Udell testified, at the hearing, that when he parked the vehicle he did not observe any temporary no parking signs/barricades. Mr. Donald Joseph Udell stated that he parked the vehicle on December 9, 2009, during the morning (a.m.) hours and it was towed on the morning of December 11, 2009. Mr. Donald Joseph Udell stated that he last visited his vehicle on December 10, 2009 at approximately 6:45 p.m.; he stated he did not see any temporary no parking signs at that time.

Mr. Donald Joseph Udell, in the letter requesting a tow appeal hearing (Exhibit 1) indicated that after the vehicle was towed he contacted a neighborhood organization representative who described the "spreading of information" about "street sweeps" and was told that most often an annual schedule of "street sweeps" is sent to neighborhood businesses and residents. Mr. Donald Joseph Udell stated that neighborhood representative told him that the December sweep was not on the annual schedule and mailed notices were not provided to neighborhood residents. Mr. Donald Joseph Udell stated that the neighborhood representative informed him that "portable street signs notifying drivers of the street sweeps are required to be placed at least 24 hours in advance." Mr. Donald Joseph Udell, in Exhibit 1, then stated that

"although, as a resident who chooses to take alternative modes of transportation, I am not a daily vehicle commuter and I don't believe that I should be penalized for my infrequent vehicle usage. Because I drive so infrequently I did not see the placement of these signs. In addition, the signs

should only be used as a last minute method to notify visitors to the neighborhood. Ideally the residents should already be aware of the sweeping and shouldn't have to rely on a sign that only allows 24-hours notice."

The Parking Enforcement Officer who ordered the Udell vehicle towed submitted a Tow Hearing Report (Exhibit 5), copy of a parking violation (Exhibit 6) and two photographs (Exhibit 7). The narrative (officer comment) section of the Tow Hearing Report (Exhibit 7) states:

"routine and annual street cleaning – Notices went out – barricades verified 24 hours in advance – car should be moved everyday per parking regulations – barricades are the notices with flyers and media notices. Clearly signed."

The Tow Hearing Report (Exhibit 7) also noted that the temporary no parking signs/barricades were placed and verified on the block face, where the Udell vehicle was parked, at 3:21 p.m. on December 9, 2009. Exhibit 8, a copy of the parking violation, indicates that the Udell vehicle was towed at 8:16 a.m. on December 11, 2009.

The Hearings Officer must find a tow valid if the Hearings Officer finds that the person ordering the tow followed the relevant laws/rules. In this case, the relevant laws/rules are 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 posted restricted space/zone.

The Hearings Officer finds that the photo showing a no parking sign on Exhibit 7 is not credible; the Hearings Officer cannot relate that picture to the location of the Udell vehicle. The Hearings Officer finds that the photo on the left side of Exhibit 7 is the back end of the Udell vehicle but no temporary no parking sign can be seen in this photo. The Hearings Officer gave the photos in Exhibit 7 no weight in the making of this decision.

The Hearings Officer finds that the narrative/comments made by the Parking Enforcement Officer are credible (Exhibit 5). The Hearings Officer finds that the Parking Enforcement Officer was at the location of the Udell vehicle during morning hours and his job requires that he observe the placement, or not, of temporary no parking signs. The Hearings Officer finds that the temporary no parking signs/barricades were placed/verified on December 9, 2009 at 3:21 p.m. The Hearings Officer finds that Mr. Donald Joseph Udell parked the Udell vehicle during the morning hours of December 9, 2009. The Hearings Officer finds that the Udell vehicle was parked prior to the temporary no parking signs/barricades being placed. The Hearings Officer finds that the Udell vehicle was not moved until it was towed on December 11, 2009. The Hearings Officer finds that Mr. Donald Joseph Udell may have walked in the general area of the location where the Udell vehicle was parked on December 10, 2009, but per Mr. Donald Joseph Udell's testimony, his walk was at approximately 6:45 p.m. Mr. Donald Joseph Udell did not say, with clarity, that he walked on the block face where the Udell vehicle was parked. Further, the time he walked, on December 10, 2009, would have been during dark/evening hours. The Hearings Officer finds, based primarily upon the Parking Enforcement Officer's

narrative/comments (Exhibit 5), that temporary no parking signs were placed along the block face where the Udell vehicle was parked starting December 9, 2009 (3:21 p.m.) through the time the tow was ordered on December 11, 2009.

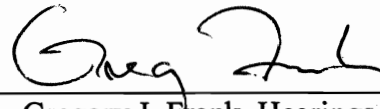
The Hearings Officer finds that temporary no parking signs were placed on the block face where the Udell vehicle was parked more than 24 hours before the Udell vehicle was ordered towed. The Hearings Officer finds that the temporary no parking signs were present at the time the Udell vehicle was towed. The Hearings Officer finds the Parking Enforcement Officer followed the relevant laws/rules when ordering the Udell vehicle towed on December 11, 2009. The Hearings Officer finds the tow of the Udell vehicle on December 11, 2009 is valid.

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: January 8, 2010

GJF:rs



Gregory J. Frank, Hearings Officer

Bureau: Parking Enforcement

Tow Number: 24608

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Letter	Udell, Donald Lee	Received
2	Tow desk printout	Hearings Office	Received
3	Hearing Notice	Hearings Office	Received
4	Tow Hearings Process Info. sheet	Hearings Office	Received
5	Tow Hearing Report	Parking Enforcement	Received
6	Parking Violation	Parking Enforcement	Received
7	Photos	Parking Enforcement	Received