



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

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**HEARINGS OFFICER'S ORDER**

**APPEAL OF RICHARD NYE**

**CASE NO. 1100065**

**DESCRIPTION OF VEHICLE: Jaguar X-Type (WA 146WDP)**

**DATE OF HEARING: April 22, 2010**

**APPEARANCES:**

None.

**HEARINGS OFFICER: Ms. Christina A. Austin-Smith**

Mr. Richard Nye contacted the Hearings Office on Thursday, April 22, 2010, to advise that he was unable to attend the hearing as scheduled. He did, however, submit evidence via fax at 11:11 a.m. on April 22, 2010, for the Hearings Officer's consideration (Exhibits 9-13). No one appeared on behalf of the City. Although the Towing Hearings Officer Rules and Regulations, ADM-9.03, do permit the Hearings Officer to make a default finding of a valid tow if the appellant fails to appear at the time and place set forth (Rule 2-4(a)), because Mr. Nye did contact the office before the hearing and submitted documentary evidence for consideration, the Hearings Officer will consider all the evidence submitted and make findings and a decision based on the merits of the case, without Mr. Nye's appearance. Accordingly, the Hearings Officer makes this decision based on substantial evidence upon the record as a whole, which includes the documents admitted into evidence (Exhibits 1 through and including 13).

**Summary of Evidence:**

When originally requesting a hearing, Mr. Nye submitted the required form and indicated that he challenged the validity of the tow of his vehicle from SW Main Street between 10<sup>th</sup> and 11<sup>th</sup> Avenue because "the temporary no parking signs were not posted when I parked that morning" (Exhibit 1).

In a letter submitted to and received by the Hearings Office on April 22, 2010, Mr. Nye indicated his desire to formally challenge the tow and explained he was unable to attend the hearing in person. He requested his letter and other enclosed evidence be considered. Mr. Nye contends that the temporary signs indicating No Parking were not posted when he and his co-worker arrived at 6:30 a.m. on the day of the tow, April 1, 2010. He explained that he carpools with co-workers and has parked in the same block for over two years. He states he is aware that the temporary No Parking signs are posted about once a month in that area and contends he has never before missed seeing them posted. In support of his position, Mr. Nye submitted three photos (Exhibits 10-12) that illustrate how noticeable the temporary No Parking signs are when they are posted on the block. He also submitted a written statement from his co-worker, Ms. Gina Lint (Exhibit 13). Ms. Lint writes that she carpooled

with Mr. Nye on April 1, 2010, when they parked on Main Street at 6:30 a.m. Ms. Lint asserts "there were no temporary signs posted when we parked the car. After work we walked to the car and discovered the car had been towed and temporary NO PARKING signs were posted." Ms. Lint also states she has never previously missed the posted signs in parking on that same block for two years and suggests that the signs were perhaps posted after they parked that morning.

City of Portland Parking Enforcement Officer G. Shervey did not attend the hearing, but did submit a report of the towing incident and other documents to justify the towing action for the Hearings Officer's consideration (Exhibits 5-8). Exhibit 5 indicates Officer Shervey received a complaint about the vehicle in a temporary No Parking zone at 10:34 a.m. on April 1, 2010. Officer Shervey notes the signs indicated "No Parking this block" from SW Park to SW 11<sup>th</sup> on the North and South sides of the Street. A hand-drawn map indicates the vehicle was parked on the North side of Main Street between 10<sup>th</sup> and 11<sup>th</sup> Avenue. Officer Shervey wrote: "All signs were covered 3-31-10 which I observed on 3-31-10 while on routine patrol. (M75) installed at 12:25 p.m. on 3-31-10. This veh has a carpool permit and the vehicle was indicated parked there on the date of installation by M75 at 12:25p 3-31-10." Exhibit 6 is a permit to reserve parking for the PCPA from SW Main Street between SW 11<sup>th</sup> Avenue and SW 9<sup>th</sup> Avenue on the North side between 4/1/10-4/2/10, 8 a.m. Thursday through 1:30 p.m. Friday. The permit indicates 7 bags and 5 delineators were installed in this location on 3-31-10 at 12:25 p.m. by installer #75. A listing of vehicles parked in this area at the time of installation indicates a vehicle with the license plate 146 WDP was parked on Main Street between 10<sup>th</sup> and 11<sup>th</sup> Avenue at this time. Exhibit 8 are photos submitted that show the vehicle, a Jaguar with Washington plates 146 WDP parked in the No Parking zone on April 1, 2010, at 10:36 a.m. when a citation was issued and the tow was ordered.

#### **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 16.20.205C states "a sign which prohibits parking during certain hours or days such as 'No Parking 7 a.m. to 9 a.m. Monday through Friday' ... is in effect during the days and times shown on the sign, excluding City recognized holidays." PCC 16.30.210A authorizes the City to tow a vehicle and be held at the expense of the owner if it is parked in the public right-of-way and "is parked in violation of a temporary or permanent parking restriction" (PCC 16.30.210A1). PCC 16.30.210E states, "temporary parking restrictions may be enforced by tow if the space reservation device and/or signs are in place by 12:30 p.m. the prior day in any meter district." PCC 16.30.220B allows an officer to order a vehicle towed without prior notice when it is illegally parked in a conspicuously posted restricted space.

#### **Findings of Fact and Conclusions of Law:**

The Hearings Officer finds that the preponderance of the evidence, as witnessed by Officer Shervey and reported by installer M75, indicates that on March 31, 2010, at 12:25 p.m. temporary No Parking bags and delineators were installed on the North side of SW Main Street between SW 11<sup>th</sup> Avenue and SW 9<sup>th</sup> Avenue (Park Avenue). The Hearings Officer finds that these signs reserved a temporary No Parking zone on those blocks from 8 a.m. April 1, 2010 until 1:30 p.m. April 2, 2010. The Hearings Officer finds that at the time of installation, Mr. Nye's vehicle with Washington license plate 146 WDP was parked on the North side of Main Street between 10<sup>th</sup> and 11<sup>th</sup> Avenue, as reported by installer M75. The Hearings Officer also finds that on April 1, 2010, at 10:36 a.m., during the restricted parking timeframe, Officer Shervey observed Mr. Nye's vehicle parked in violation of the temporary No Parking zone on the North side of Main Street between 10<sup>th</sup> and 11<sup>th</sup> Avenue. The Hearings Officer finds, based on the evidence submitted, that temporary No Parking signage was conspicuously posted by 7 bags to cover signs and 5 delineators, which were also posted on the South side of Main Street in this location. The Hearings Officer carefully considered Mr. Nye's and Ms. Lint's assertions that signs were not posted at 6:30 a.m. on April 1, 2010, when they parked in that location, but finds them inconsistent with and less credible than the report filed by the City installer and the observations of Officer Shervey on March 31, 2010. Accordingly, the Hearings Officer finds that the temporary No Parking restrictions were in place on March 31, 2010 before 12:30

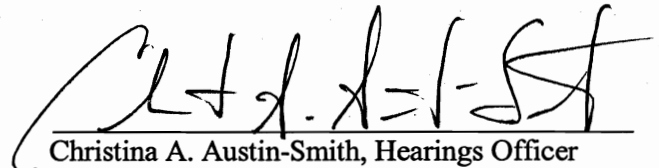
p.m., and that the City properly ordered Mr. Nye's vehicle towed as it was illegally parked in a restricted zone that had been conspicuously marked.

**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: April 23, 2010  
CAAS:rs/cb



Christina A. Austin-Smith, Hearings Officer

Enclosure

Bureau: Parking Enforcement  
Tow Number: 5909

Exhibit #	Description	Submitted by	Disposition
1	Hearing request form	Nye, Richard	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	Copy of Permit to Use Dedicated Street	Parking Enforcement	Received
7	Parking Violation	Parking Enforcement	Received
8	Photos	Parking Enforcement	Received
9	Letter from appellant	Nye, Richard	Received
10	Photo	Nye, Richard	Received
11	Photo	Nye, Richard	Received
12	Photo	Nye, Richard	Received
13	Letter from Gina Lint	Nye, Richard	Received