



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

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HEARINGS OFFICER'S ORDER

APPEAL OF TRACY L. SILVA

CASE NO. 1100068

DESCRIPTION OF VEHICLE: Volkswagen Jetta (OR 823EQD)

DATE OF HEARING: April 29, 2010

APPEARANCES:

Ms. Tracy Silva, Appellant

HEARINGS OFFICER: Ms. Christina A. Austin-Smith

Ms. Silva appeared at the hearing and testified on her 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 Ms. Silva and the documents admitted into evidence (Exhibits 1 through and including 9).

Summary of Evidence:

Ms. Silva testified that on April 11, 2010, at or very near 12:00 a.m., she parked her vehicle on the corner of 2nd and Pine in downtown Portland, in what she believed was a legal parking space, based on the time she parked there. Ms. Silva testified that to the best of her knowledge, according to her vehicle's clock and other time devices, it was 12:00 a.m.. Ms. Silva offered into evidence for the Hearings Officer's consideration Exhibits 7-9. Exhibit 8 is a color photo of the signage where Ms. Silva parked, that indicates no parking is allowed in that spot for truck loading from 7 a.m. until 7 p.m. Monday through Saturday, and no parking all days, except for passenger loading, 6 p.m. until 12 a.m. Ms. Silva pointed out that the citation she received for this parking violation is dated incorrectly, October 11, 2010, and the time listed is 12:00 a.m. (Exhibit 7). In addition, she pointed out the towing receipt indicates the tow was ordered at 12:02 a.m. on Sunday April 11, 2010 and the truck arrived on scene at 12:09 a.m.

Exhibit 5 is a Towed Vehicle Record submitted by the Portland Police Bureau (PPB). This document indicates the tow was ordered at 12:01 a.m. on April 11, 2010. Exhibit 6 is an investigation report submitted by the PPB. This report, filed by Officer Kula Bradley, indicates a report time of April 11, 2010 at 0000 and a start/end time as April 17, 2010 at 0000. The one sentence summary of the incident is "car towed from loading zone." At the bottom of the form, in the narrative, the officer has written: "while on entertainment district patrol I saw the listed vehicle parked in a reserved zone. The car was there for at least 15 minutes before midnight on the day in question when the parking spot is a reserved loading zone. The car was secure and towed from the scene."

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" or "Truck Loading Zone 7 a.m. to 6 p.m. Monday through Friday" is in effect during the days and times shown on the sign, excluding City recognized holidays." PCC 16.30.210A1 permits a vehicle to be towed when in violation of a permanent parking restriction. PCC 16.30.220B permits a tow 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 Ms. Silva was a credible witness and based on her testimony, believes that she parked in the parking spot at or close to 12 a.m. on Sunday, April 11, 2010. The Hearings Officer finds, based on the photo of the signs provided by Ms. Silva, that 12 a.m. was a valid time to be parked in this space, outside both windows posted as No Parking. The Hearings Officer finds the only evidence on the record that Ms. Silva was parked outside of this timeframe, is the narrative report entered by the officer ordering the tow indicating she was in the parking spot 15 minutes before midnight. All other times reported for the tow are right at or after 12 midnight. In addition, the Hearings Officer does find several inconsistencies with the officer's reports, to include the date the incident started and ended (written as April 17, 2010 instead of April 11, 2010) (Exhibit 6) and the date listed on the parking violation (October 11, 2010 instead of April 11, 2010) (Exhibit 7). Therefore, in this case based on the evidence in the record, the Hearings Officer finds Ms. Silva's report of the timing of when she parked in the spot credible and reasonable. Since the tow was not ordered until after 12 a.m., which was during a valid parking time, this was not a violation of the posted parking restrictions and not a valid tow.

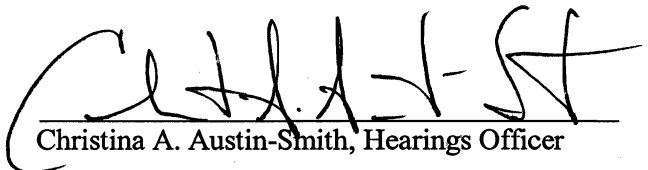
Order:

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: April 30, 2010

CAAS:rs/cb



Christina A. Austin-Smith, Hearings Officer

Enclosure

Bureau: Police
Tow Number: 6556

If a refund has been authorized, it will be sent from the City's Accounts Payable Office. Please allow at least 3 weeks.

Exhibit #	Description	Submitted by	Disposition
1	Hearing request letter	Silva, Tracy L.	Received
2	Tow Desk printout	Hearings Office	Received
3	Hearing Notice	Hearings Office	Received
4	Tow Hearings Process Info. sheet	Hearings Office	Received
5	Towed Vehicle Record	Police Bureau	Received
6	Investigation Report	Police Bureau	Received
7	Tow Invoice and Parking Violation	Silva, Tracy L.	Received
8	Photo	Silva, Tracy L.	Received
9	4/12/10 letter	Silva, Tracy L.	Received