

CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF Kelley M. Begley

CASE NO. 1110057

DESCRIPTION OF VEHICLE: Suzuki Sidekick (OR 265CZE)

DATE OF HEARING: June 2, 2011

APPEARANCES:

Ms. Kelley Begley, Appellant

HEARINGS OFFICER: Ms. Kimberly M. Graves

Ms. Begley 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. Begley and the documents admitted into evidence (Exhibits 1 through, and including, 23).

Summary of Evidence:

Ms. Begley submitted a Tow Hearing Request Form, Exhibit 1, in which she writes that the "stretch of roadway is not clearly marked as a no parking zone." She writes that she looked for signs on all posts and saw no signs, so she parked in the area for nearly two weeks. Ms. Begley writes that there is one sign in the area, but that it sits approximately 10 feet from the road. Ms. Begley writes that traffic moving east and west would never see this sign. Ms. Begley appeared at the hearing and testified that she believed the area in which she parked was a lawful parking space, as there are no "no parking" signs in the area. Ms. Begley provided photos showing that both the block to the north (Exhibit 20) and the block to the south (Exhibit 18) of where her vehicle was parked are clearly posted with no parking signs. Ms. Begley also provided photos of the spot in which her vehicle was parked and noted the lack of any signage prohibiting parking. Ms. Begley testified that her vehicle was not encroaching on the apron of the nearby driveway or crossing over the arched portion of the corner. Ms. Begley also provided a photo of SE Belmont Ave. (Exhibit 21), in which she testified parking is permitted in a travel lane which is narrower than the lane in which she was parked.

The City submitted Exhibits 5 through, and including, 11 for the Hearings Officer's consideration. Exhibit 5 is a written report from the Office of Transportation Parking Enforcement Division regarding the tow of Ms. Begley's vehicle on April 29, 2011. In the narrative portion, the Parking Enforcement Officer writes that they responded to a complaint for a vehicle blocking a traffic lane on NE Grand Ave. The officer located the vehicle "in the lane of traffic on the north end of the block." The officer writes that the lane measured 13 feet wide, and the vehicle 5 feet wide. The remaining lane passable for vehicles would be 8 feet wide. The officer writes that "any vehicle

midsize or larger would need to cross line to get around” and that a UPS driver stopped and thanked the officer for moving the vehicle. The officer, in Exhibit 7, included 4 photos of the vehicle as it was parked prior to towing. The officer also included additional photos of the area in Exhibits 8 through 11.

Applicable Law:

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 16.20.120 E, 16.30.210 A.2 and 16.30.220 A and B. PCC 16.20.120 E prohibits parking in a location that prevents the free passage of vehicles on a City of Portland roadway. PCC 16.30.210 A.9 authorizes the City to order a vehicle towed, and held at the expense of the owner, if the vehicle is in the public right-of-way and the vehicle is parked in violation of a parking restriction. PCC 16.30.220 A permits the City to order a vehicle towed, without prior notice to the owner, if the vehicle is impeding or likely to impede the normal flow of vehicular traffic.

Findings of Fact and Conclusions of Law:

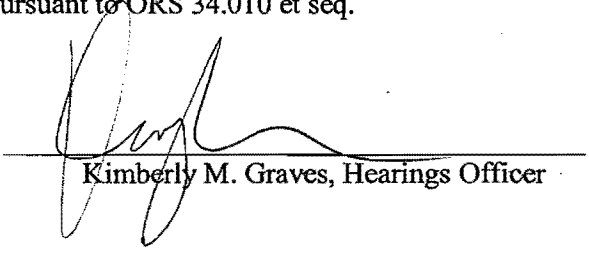
The Hearings Officer finds that NE Grand Ave. is a public right-of-way. The Hearings Officer finds that on April 29, 2011 Ms. Begley parked her vehicle on NE Grand Ave. at the north corner of Grand and Schuyler. The Hearings Officer finds that there are no City of Portland signs pertaining to parking in the area where Ms. Begley’s vehicle was parked. The Hearings Officer finds the photos submitted by both parties to be essential to determining whether Ms. Begley’s vehicle was parked in violation of PCC 16.20.210E. The Hearings Officer notes that the Parking Enforcement Officer appears most concerned with the width of the travel lane as a result of Ms. Begley’s parking of her vehicle. The Hearings Officer notes that in the upper right hand photo on Exhibit 7 it is clear that the roadway north of where Ms. Begley’s vehicle is parked narrows significantly. Based on the photo, it would appear that the roadway narrows to a width similar to the width of the roadway next to Ms. Begley’s vehicle as it is parked. The Hearings Officer finds that Ms. Begley’s vehicle, as parked, does not restrict the travel lane to such a degree that it is in violation of PCC 16.20.210E. The Hearings Officer finds that the tow of Ms. Begley’s vehicle is invalid.

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: June 3, 2011
KMG:jeg


Kimberly M. Graves, Hearings Officer

Enclosure

Bureau: Parking Enforcement
Tow Number: 7806

Exhibit #	Description	Submitted by	Disposition
1	Tow Hearing Request Form	Begley, Kelley M.	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	Parking Enforcement	Received
7	Photos	Parking Enforcement	Received
8	Google maps printout: NE Grand Ave and Schyler	Parking Enforcement	Received
9	Google maps printout: 1792 Northeast Grand Avenue	Parking Enforcement	Received
10	Google maps printout: Ne Grand ave and schyler Portland or	Parking Enforcement	Received
11	Google maps printout: Ne Grand ave and schyler Portland or	Parking Enforcment	Received
12	Request to Reschedule Form	Begley, Kelley M.	Received
13	Hearing Notice	Hearings Office	Received
14	Tow Hearing Request Form, dated 5/27/11	Begley, Kelley M.	Received
15	Photo of sign	Begley, Kelley M.	Received
16	Photo of sign 2	Begley, Kelley M.	Received
17	Bus stop photo	Begley, Kelley M.	Received
18	Photo: Walgreens	Begley, Kelley M.	Received
19	Photo Parking Lot	Begley, Kelley M.	Received
20	Turn lane sign	Begley, Kelley M.	Received
21	Street View	Begley, Kelley M.	Received
22	Curve sign picture	Begley, Kelley M.	Received
23	Receipt from Newhouse & Hutchins Towing	Begley, Kelley M.	Received