

REASONS FOR DECISION OF THE ADMINISTRATIVE PENALTY TRIBUNAL

Form 10

Date of Hearing: November 22,2021

Hearing Officer: Jenny Gumbs

Re: PD396468

City's Representative: None in Attendance

Owner's Representative: Lambert Boenders

INTRODUCTION

On April 4th 2021, at 10:53 a.m., at a location near 500 University Avenue, Parking Violation Notice (PVN) PD396468 was issued to licence plate number GVAS565 citing that the vehicle was parked within 3 metres of a fire hydrant, contrary to Toronto Municipal Code, Chapter 950-400D(2). Mr. Lambert Boenders is the registered owner of the vehicle. The penalty levied at first instance was in the amount of \$100.00.

EXTENUATING CIRCUMSTANCES - a special or specified circumstance, including such types of extenuating circumstances established by the City Solicitor that partially or fully exempts a person from performance of a legal obligation so as to avoid an unreasonable or disproportionate burden or obstacle.

FINANCIAL HARDSHIP - a significant difficulty or expense and focuses on the resources and circumstances of the person owing an administrative penalty, including administrative fees, in relationship to the cost or difficulty of paying the administrative penalty or any administrative fees.

SCREENING OFFICER'S DECISION

The Screening Officer, in a decision dated May 4, 2021, varied the original administrative penalty and reduced it by 50% to \$50.00. Chapter 950-400D(2) prescribes the method for measuring the requirement. Specifically, the 3 metres limit is measured from the point on the curb/street that is parallel to the hydrant, along the curb to the vehicle, not on an arc or diagonal from the hydrant to the vehicle. The Owner's evidence and Submissions did not warrant a cancellation.

CITY REPRESENTATIVE'S EVIDENCE

No City Representative appeared at the hearing. Pursuant to the Toronto Municipal Code, Chapter 610, sections 1.2 and 2.3, the PVN is a certified statement of the parking enforcement officer and is evidence of the facts stated therein, in the absence of evidence to the contrary. As such, the PVN evidenced a contravention of the Owner's vehicle of the Toronto Municipal Code Chapter 950-400D(2).

RECIPIENT'S EVIDENCE

The Owner submitted an affidavit and photos of the location where the offence occurred.

CITY REPRESENTATIVE'S SUBMISSIONS

There was no City representative in attendance at the hearing and no written submissions were provided.

RECIPIENT'S SUBMISSIONS

According to the Owner, the car was parked well over 4 metres of the hydrant. He provided photos with measurements - outlined with a tape measure, the fire hydrant and the location of his parked vehicle. Also submitted as evidence, was a Statutory Declaration attesting that the photographs and measurements detailed in his submission were taken in front of 500 University Avenue and that the diagonal measurement from hydrant to the parking line was a minimum of 3.9m.

REASONS FOR DECISION

The Tribunal's jurisdiction is governed by Chapter 610 of the Toronto Municipal Code. Pursuant to Sections 1.2 and 2.3, the PVN constitutes a certified statement of the parking enforcement officer, thereby being evidence of the facts as stated therein, in the absence of evidence to the contrary. The presumption that a violation occurred can be displaced, but

only where the Owner or Agent is able to convince the Hearing Officer that on a balance of probabilities, the offence did not occur. The governing legislation also stipulates that the decision of a Hearing Officer is final.


The Hearing Officer considered the applicable legislation, the supporting documentary and photographic evidence of the parking enforcement officer, the decision of the Screening Officer, and the submissions of the Owner. The Owner did not dispute that the vehicle was parked in the location indicated on the PVN. He disputes that the vehicle was parked within less than 3 metres of the fire hydrant but instead was parked well over 4.2 metres.

At the Hearing, the Hearing Officer was satisfied that the owner provided evidence to establish, on the balance of probabilities, that the PVN was issued in error.

Upon reflection, the Hearing Officer now considers that the Screening Decision was correct, and that the Screening Officer correctly applied the standard outlined in Chapter 950 400D(2). Accordingly, the Owner's evidence was based on an incorrect measurement methodology and should not have resulted in a Cancellation of the PVN.

DECISION

The Administrative Penalty of \$50.00 and any associated fees, on a balance of probabilities, were cancelled at the Hearing. Pursuant to Chapter 610 of the Toronto Municipal Code, the Decision of the Hearing Officer is final, and cannot be amended once it has been made.



Jenny Gumbs
Hearing Officer

Date Signed: December 10, 2021