

## REASONS FOR DECISION OF THE ADMINISTRATIVE PENALTY TRIBUNAL

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Form 10

Date of Hearing:           Wednesday, June 22, 2022

Hearing Officer:           Deborah Boudreau

Re:                            PF585567

City's Representative:     None

Owner's Representative:   Alexander Cieslak

### INTRODUCTION

Four Parking Violation Notices were issued to plate number CSXC984 between December 6, 2021 and January 4, 2022. Each of them cited that the vehicle was parked during a prohibited day/time contrary to the Toronto Municipal Code, Chapter 950-405A. The infractions all occurred at approximately the same location, on the East side of Brock Avenue north of Bloor Street West. Brock Avenue is a one-way street running south from Wallace Avenue to Bloor Street West. On June 22, 2022, the Tribunal consolidated these four matters and heard the proceedings at the same time as they involved the same facts, issues and evidence. The same decision was made with respect to each of the four matters.

Written reasons were requested only for PF585567.

On Monday, December 6, 2021, at 4:23 p.m., near 615 Brock Avenue, in the City of Toronto, Parking Violation Notice PF585567 ("PVN") was issued to plate number CSXC984 citing that the vehicle was parked during a prohibited (Day/Time) contrary to Toronto Municipal Code Chapter 950-405A. Cheyenne Chandler-Strub (Owner) is the registered owner of the vehicle. Alexander Cieslak (Agent) appeared as agent for the Owner. The penalty levied at first instance was in the amount of \$50.00.

**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.

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**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 March 28, 2022, affirmed the original penalty, noting that there is no parking at this location at anytime, except each Thursday from April 1 to November 30 inclusive.

## **CITY REPRESENTATIVE'S EVIDENCE**

No City Representative appeared at the hearing. Pursuant to Toronto Municipal Code Chapter 610, Sections 1.2 and 2.3, the PVN is a certified statement of the parking enforcement officer, thereby being evidence of the facts stated therein, in the absence of evidence to the contrary. In this case the PVN evidenced a contravention of Toronto Municipal Code, Chapter 950-405A, that is the vehicle was parked on a signed highway during a prohibited day/time.

## **RECIPIENT'S EVIDENCE**

The Agent submitted extensive written and oral submissions, and an evidence package related to two Previous Decisions that he relied on (which included PVN's, photos and written decisions of the Hearing Officer with respect to the Previous Decisions).

## **CITY REPRESENTATIVE'S SUBMISSIONS**

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

## **RECIPIENT'S SUBMISSIONS**

The Agent did not dispute that the vehicle was parked in the manner and location as indicated on the PVN, rather he submitted that the vehicle was not parked in violation of the parking prohibition in effect at the time. The Agent submitted that parking was only prohibited at this location from April 1 to November 30, except on Thursdays in accordance with the posted sign, and the PVN was issued on December 6, 2021 which is outside of the period when parking is prohibited.

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The posted sign relied on by the Agent is located on the East side of Brock Avenue at Bloor Street West. It has a large letter P circled in red with a line through it and under this the words EXCEPT EACH THURSDAY and under this APR 1- NOV 30. The Agent submitted that it is only the symbols and words on the sign that should be considered to determine the applicable prohibition. The Agent made extensive submissions in this regard.

The Agent also relied on two decisions of the Tribunal dated November 1, 2021 (the Previous Decisions) which involved the same violation at the same location with respect to another vehicle under the care and control of the Agent. The parking violation notices were issued on February 17, 2021 and March 26, 2021. The Hearing Officer in those matters found that the vehicles were parked at a day/time that was **not** in contravention of the no parking prohibitions at this location and cancelled both of the PVN's.

The Agent acknowledged that at the time the Previous Decisions were made he had been unaware of and the Previous Decisions were made without reference to Chapter 950 -1312 Schedule XIII: No Parking.

## **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, in this case through the evidence of the Agent is able to convince the Hearing Officer that on a balance of probabilities the violation did not occur. The governing legislation also stipulates that the decision of the Hearing Officer is final.

The PVN evidenced a contravention of Toronto Municipal Code Chapter 950-405A. The authorized short form wording is set out in the PVN - Park -Signed Highway- During Prohibited (Day/Time) contrary to TORONTO MUNICIPAL CODE CH.950-405A.

The complete wording set out in Chapter 950-405A is: No parking certain times "...where official signs to that effect are displayed, no person shall park a vehicle on any highway at the side and between the limits set out in Schedule XIII in §950-1312 **during the times and/or days set out in Schedule XIII.**"

Schedule XIII – No Parking- sets out the no parking prohibition for the East side of Brock Avenue between Bloor Street West and Wallace Avenue. The prohibited time is: " **ANYTIME**, except each Thursday; Apr.1 to Nov.30, inclusive."

The sign on the East side of Brock Avenue at Bloor Street West gives effect to this prohibition. The word **ANYTIME** is not required to be on the sign. Schedule XIII sets out the prohibition that is represented by the sign. The only time that parking is permitted on the East side of Brock Avenue between Bloor Street West and Wallace Avenue is on each Thursday from April 1 to November 30. It is not permitted at any other day/time. It was not permitted on December 6, 2021.

I have considered the applicable legislation, the evidence of the parking enforcement officer, the decision of the Screening Officer, the written and oral evidence and submissions of the Agent including material and decisions related to the Previous Decisions. The Agent did not persuade me on a balance of probabilities that the Owners vehicle was parked at a day/time that was permitted under Chapter 950-405A.

At the time of this violation, the Tribunal had issued the Previous Decisions to the effect that parking at this location would not be prohibited at the time in question. The vehicle was parked in good faith and in reliance on the Previous Decisions. In my view this is a special circumstance that exempts the Owner from performance of a legal obligation to avoid an unreasonable and disproportionate burden.

## DECISION

The Administrative Penalty and all associated fees are cancelled for undue hardship (extenuating circumstance).



Deborah Boudreau  
Hearing Officer

Date Signed: July 18, 2022