

# REASONS FOR DECISION OF THE ADMINISTRATIVE PENALTY TRIBUNAL

Form 10

Date of Hearing: May 2, 2023

Hearing Officer: M. Jiwan

Re: PG672723

City's Representative: None in Attendance

Owner's Representative: Ming Xu

## INTRODUCTION

On October 29, 2022 at 11:51, a Parking Violation Notice (PVN) was issued to plate number BRSP832 citing that the vehicle was parked on a signed highway at a prohibited day and time in contravention of the *Toronto Municipal Code Chapter 950-405A*, near 252 Adelaide Street East. Liu Yang is the registered owner of the vehicle. The Representative for the Owner is Ming Xu. 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.

**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** – In their decision dated March 8, 2023, the Screening Officer affirmed the original penalty of \$50.00 noting in part, the following reasons: “Please be advised there is no parking at this location anytime. A Green P receipt does not provide an exemption in a “no parking” zone. Satisfied the violation occurred based on officer photographs. Penalty affirmed with an extension of time to pay.”

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**CITY REPRESENTATIVE'S EVIDENCE –** No City Representative appeared at the hearing and no written submissions were provided.

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 950-405A.

### **RECIPIENT'S EVIDENCE**

The Agent submitted extensive written submissions on April 21, 2023 that he relied on for his extensive oral submissions. The written submissions as listed on the file are the *Toronto Municipal Code 1184\_950*, *Toronto Municipal Code 950-1312*, *By-law 817-2015.pdf*, *Adelaide st. George st. (Google map)*, *Toronto code-610.pdf* and *Legal grounds*. On October 29, 2022, the Agent also submitted a copy of a Green P parking receipt for the same date.

### **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 at the time, date, location and manner as indicated on the PVN. Rather, he submitted that the vehicle was not parked in violation of the parking prohibition.

The Agent provided a document "Legal Grounds for hearing request of Parking Violation PG672723":

1. From the notice of screening decision, it was affirmed of the penalty by the review officer based on the officer's photographs, but not under the actual provision of **S.950-1312 SCHEDULE XIII** of TORONTO MUNICIPAL CODE 950-405A.

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**S. 950-405 Stopping, standing and parking restrictions and prohibitions on certain highways.**

A. No parking certain times.

Except where Chapter 903, Parking for Persons with Disabilities, applies with respect to exempting vehicles exhibiting an accessible parking permit, 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 S. 950-1312** during the times and/or days set out in Schedule XIII.

2. In **Schedule XIII in S. 950-1312**, almost all of the sections ~~of~~ on north side of Adelaide Street East were repealed for prohibited times/days. NR 252 ADELAIDE St E is not in the list of no parking location.
3. The location of alleged parking violation, which is between a point 15 metres of George Street and a point 15 metres further east, was repealed under S.I (J) By-Law 817-2015.
4. I request the screening decision to be cancelled as the vehicle was not parked contrary to the designated by-law provision as described in the penalty notice on the balance of probabilities, which is under S610-2.3(J)(2) of TORONTO MUNICIPAL CODE CHAPTER 610.

The Agent asserted that the “No parking” restriction for 252 Adelaide East was not valid and the posted sign denoting “No parking” should be removed. In this regard, he referred to *Toronto Municipal Code 950-405A*, and specifically to Schedule XIII in 950-1312.

Schedule XIII in 950-1312:No Parking lists various Adelaide Street East locations where restrictions on parking were repealed in 2015 and 2019. The Agent also relied on *City of Toronto By-law 817-2015*. This by-law lists two Adelaide street locations on the north side including “A point 15 metres east of George Street and ~~and~~ a point 15 metres further east. The Agent provided a google map showing parts of George Street and Adelaide Street East.

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## REASONS FOR DECISION

The Tribunal's jurisdiction is governed by the *Toronto Municipal Code, Chapter 610*. Pursuant to Sections 1.2 and 2.3, the PVN constitutes the certified statement of the Parking Enforcement Officer (PEO), thereby being the evidence of the facts as stated therein, in absence of evidence to the contrary. In this case, the PVN evidenced a contravention of the *Toronto Municipal Code, Chapter 950-405A*, that is the vehicle was parked on a signed highway during a prohibited day/time. 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 wording is set out in the PVN- Park-Signed Highway – During Prohibited (Day/Time) contrary to *Toronto Municipal Code Chapter 950-405A*.

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

The sign posted where the vehicle is parked is a large sign with **P crossed out**, denoting that parking is not permitted there. This is shown on the PEO's photograph taken at the same time and date that the PVN was issued. The photograph is supplementary to the PVN itself, which is the foundational evidentiary component in a hearing.

The Agent asserts that many of the locations on Adelaide Street East were repealed by By-Law 817-2015. I have reviewed the locations listed on Schedule XIII, the two locations on Adelaide Street East in By-law 817-2015, the google map, the Legal Grounds and the parking receipt.

The Hearing Officer considered the applicable legislation, the Screening Officer's decision, the evidence of the PEO and the written and oral evidence and submissions of the Agent. The onus is on the Agent to prove to the Hearing Officer that the vehicle was parked in compliance with the *Toronto Municipal Code Chapter 950-405*. The Agent did not persuade the Hearing Officer, on a balance of probabilities, that the vehicle

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was parked near 252 Adelaide Street East at a day/time that was permitted under *Chapter 950-405A*. In the circumstances of this case, the Hearing Officer- also considered the plate history of the vehicle and on that basis, not withstanding the finding that the infraction occurred, the original penalty amount of \$50.00 is varied and reduced to \$25.00 due June 6, 2023.

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**DECISION**

The Hearing Officer varies the penalty to \$25.00 due June 6, 2023.

Mumtaz Jiwan  
Hearing Officer

**Date Signed:** June 2, 2023

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