

# REASONS FOR DECISION OF THE ADMINISTRATIVE PENALTY TRIBUNAL

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Form 10

Date of Hearing: Wednesday, June 29, 2022

Hearing Officer: Kayla Stephenson

Re: Parking Violation Notice ("PVN) PF655607 issued to Andrea Yeatman Owner of License Plate CLSM307 ("the Owner" or "the Recipient") on December 31, 2021, near 5 Elm Street in the City of Toronto

City's Representative: None

Owner's Representative: Andrea Yeatman`s Representative: Steven Dickie

## INTRODUCTION

On December 23, 2021, at 23:57, at a location near 5 Elm Street in the City of Toronto, Parking Violation Notice (PVN) PF655607 was issued to plate number CLSM307 citing that the vehicle was Standing on signed Highway During Prohibited (Times/Days) contrary to the Toronto Municipal Code, Chapter 950-405G. The Driver Steven Dickie appeared on behalf of the Owner Andrea Yeatman. The penalty levied 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's decision was made on April 7, 2022, and it states as follows:

“Vehicles, or a portion of, may not be halted/parked or wait in a No Standing zone; occupied or not. Submissions do not constitute an exemption to the violation. Signage visible and unobstructed, as per officer photos. Penalty affirmed. Additional time to pay granted.”

## **CITY REPRESENTATIVE'S EVIDENCE**

The PVN represents the City's evidence pursuant to Chapter 610 1.2 F, 2.3 M and N the PVN is considered to be the certified statement of the parking enforcement officer, thereby being the evidence of the facts as stated therein, in absence of evidence to the contrary.

In addition, the Enforcement Officer submitted 4 photographs taken at the material time the PVN was issued evidencing the violation.

The relevant PVN evidenced a contravention of the Toronto Municipal Code Chapter 950-405 G, that is Stand vehicle – signed highway during prohibited (times/days)

## **RECIPIENT'S EVIDENCE**

Letter of Authorization & Submissions

Evidence - Photo 1 (Exhibit A)

Evidence - Photo 2 (Exhibit B)

Evidence - Photo 3 (Exhibit C)

## **CITY REPRESENTATIVE'S SUBMISSIONS**

The City, not being present, did not make any submissions.

## **RECIPIENT'S SUBMISSIONS**

At the onset of the hearing the Owner`s Representative (Driver) submits he didn`t receive disclosure of the vehicles parking history. Officer photographs were not confirmed during the hearing.

Driver also submits the City did not disclose the Officer`s response to the request for review of the obstructed sign.

Driver submits I as the Hearing officer, cannot rely on evidence that hasn`t been disclosed 10 days prior to hearing, and further that I cannot rely on the parking history more than 10 days before this hearing. Driver states this violates principles of natural justice – no secret evidence should be allowed.

The Driver submitted he was in control of the vehicle on the night in question.

Driver arrived at the location 6:05 that evening arrived after taking a right turn on Yonge Street after Elm Street and U-Turn facing East. That there is a large dumpster behind the location where he had parked.

Driver left the car with 2 objectives:

1. To intend to pay via Green P App
2. To scan surrounding area to ensure valid location to park

Driver at 6:05 left vehicle unattended to look for code to pay for parking in the Green P app

Driver stated he accomplished first objective.

The Driver then took a second attempt to walk around to look around for a green P code.

Upon returning, the Parking Officer was writing a ticket at 6:08pm

Driver stated he politely inquired with the Parking Officer, why he's writing a ticket, Officer stated: "It's a no standing zone."

Driver only left the vehicle to find parking number to enter into the app and was willing to move the vehicle. Officer refused to engage and stated he will not reconsider the ticket.

Driver observed officer taking photos, and inquired again to Officer stating it's unfair, and this wasn't a good use of City resources.

Officer stated he will not reconsider ticket and to request a Screening.

Driver submits, he agrees with the Bylaw and disagrees with those who do not follow Bylaws.

He stated that the ticket was issued unfairly, and that it was issued contrary to the City of Toronto Parking Cancellation Guidelines.

The Driver stated that Section 7 was engaged, and the ticket should be cancelled for the following reasons:

1 – He is relying on Exhibits: A, B and C - the controlling sign is obscured. The Officer photos do not in any way show the controlling sign. The only photos that show the controlling sign is the submitted photos.

Driver defined the "Controlling sign" "is the sign closest to the Bylaw infraction and that this sign was obscured sign scaffolding at Yonge and Elm Street.

2- The original screening decision requested an investigation. That investigation was not completed. The city is in breach of its own guidelines. No investigation

notes or evidence was submitted by the city which means no investigation was done.

3. The Officer in this case did not provide any grace period in order for the driver to move the vehicle or allow to ascertain a canvas of the area to park correctly.

Driver is relying on Sections 3.9, 7 and 19. Driver submits Section 19. 4 is a specific offence where grace period does not apply. There are none that relate to the “no standing” Bylaw.

The driver further submits in summary:

- Vehicle was not left alone for more than 10 mins
- It`s unfair to prove a negative
- He affirmed at the hearing he had paid using the Green P parking app that evening but did not pay prior to the ticket being issued.
- Walked West found the code found the app was fumbling with the app. Didn't complete the purchase for the location where the vehicle was.
- Did purchase a parking pass within 10 mins of the ticket being issued and found another parking and paid there.
- Didn't have a chance to comply with the law being unfamiliar with Elm Street
- Penalty starts out illegal as a breach of the Bylaw and is cured by the purchase of the ticket
- There has to be a grace period for every infraction for the principles of natural justice to be
- Has to be test set out and a definition – no such definition in the cancellation guideline
- The Driver had no reasonable opportunity to comply with the law
- It would be overly punitive and not consistent to uphold this ticket

## **REASONS FOR DECISION**

Due to the concern of procedural fairness brought up at the onset of the hearing by the Driver, the only photos that will be considered in my decision, will be the photos provided by the Owner, as the officer photos were not confirmed by the Driver in the hearing.

Parking Officer is not required to attend the hearing.

610-1.2 F states:

*“The penalty notice shall constitute a certified statement of an enforcement officer”*

The Driver mentioned a few sections in the Penalty Cancellation Guidelines I will walk through them. The first section mentioned is:

Section 3 - Valid pay and display receipt displayed. This section states:

*“3.9 - Parking tickets may be cancelled under this section for the following infractions:*

- Park - fail to deposit fee in machine; and*
- Park - fail to display receipt in windshield.*

*A parking ticket **may** be cancelled under this section **provided the following conditions are met:***

- 1. A valid Pay and Display parking receipt was displayed on the dashboard of the vehicle when the parking ticket was issued.*
- 2. The parking receipt must show that the ticket was issued within the effective time, date and location of the receipt.*

*Additionally, a 10-minute grace period at the end of the time is granted.*

*Note: The minimum time purchased **must** be no less than ten minutes. **The original Pay and Display parking receipt must be provided as evidence.”***

Emphasis added.

The driver was asked in the hearing whether he had a Green P receipt to provide. The Driver stated, he can provide one after the hearing. Unfortunately, I will not be able to receive any additional information after the hearing.

If the Driver is going to rely on this section, he has not provided a receipt for evidence so therefore this section cannot be relied upon.

I move on to Section 7.0 Sign Missing or Illegible. This section states:

*A parking ticket **may** be cancelled if a traffic sign was missing, damaged, obscured or illegible or that there were conflicting signs on the street where the infraction occurred.*

***Staff will request** that the Toronto Police Services Parking Enforcement Office or the City of Toronto's Transportation Services Division conduct an investigation. Parking tickets **may** be cancelled for signed offences.*

*The following condition **must be met:***

- 1. The investigating office (Parking Enforcement or Transportation Services) **must recommend in writing** that the parking ticket be cancelled.*

Emphasis added.

In the hearing, the Driver stated that he made a request for an investigation to be done in the request for a Screening, and that without any documentation, that states an investigation was done, I should conclude that it wasn't, and the ticket should not be cancelled for that reason.

As stated above, the guideline requires **City staff** to request an investigation. Under The Toronto Municipal Code section **610-2.2 (L) Review by a screening officer, it states:**

*The screening officer **may** request, consider and rely on information from an enforcement officer, other City/Agency staff, or staff of the Toronto Police Service as the screening officer deems relevant, without the need for the attendance of the individual, including but not limited to: a certified statement of an enforcement officer, other documents respecting a contravention created by an enforcement officer including but not limited to a photograph taken by an enforcement officer, and any other written document prepared by an enforcement officer, other City/Agency staff, or staff of the Toronto Police Service.*

**610-2.2 M states:**

*After a review has been held by a screening officer, the screening officer shall make a screening decision and serve it on the recipient in accordance with § 610-3.2.*

The screening officer's response was (in part):

"...Submissions do not constitute an exemption to the violation. Signage visible and unobstructed, as per officer photos. "

It is in my opinion based on the evidence provided by the Screening Officer as well as the Municipal Code that an initial investigation was done by City Staff when a screening was requested, and the Screening Officer concluded, that no further investigation be done as the Screening Officer was satisfied the penalty was issued properly.

This penalty should not be cancelled based on the submissions for the above section.

Now I move onto Section 19, Time Allowance.

*The Time Allowance provision for parking offences refers to the **period of time following the expiry of a pay and display receipt or paid parking time and the issuance of a parking ticket.***

*The Toronto Police Service Parking Enforcement Unit observes a 5-minute operational grace period before issuing a parking ticket for a time-limited offence.*

*The grace period is intended to ensure fairness and integrity in parking enforcement operations, and serves both as a courtesy to drivers, and avoids the issue of timing discrepancies between a driver's watch, a hand-held ticket-writing device, and a meter or pay-and display machine.*

**The Time Allowance provision does not provide for an automatic cancellation.** *Rather, each ticket is reviewed based on the location of the offence, circumstances surrounding the offence and the vehicle plate history (i.e.: prior cancellations, fraudulent use of permits or receipts and an offenders' outstanding fines may be considered as part of the overall review).*

*The City of Toronto operates with an administrative time allowance provision for time-limited offences including expired parking meters or expired pay-and-display receipts.*

*This is a separate practice from the Toronto Parking Enforcement Unit and may allow a parking ticket issued within 10 minutes of the expiry of the time-limited period to be cancelled, rather than requiring that drivers request a trial and appear in court in these circumstances.*

**This 10-minute Time Allowance provision applies to all time-limited offences where proof of a receipt showing approved purchased time can be provided but excludes major arterial routes during rush hour periods or areas where parking is prohibited for construction, traffic or event closures.**

*Customers who wish to submit their ticket for Time Allowance consideration can do so by emailing their request to [parkingmeters@toronto.ca](mailto:parkingmeters@toronto.ca) or by fax at 416-696-4194.*

*To support your claim you must bring evidence (i.e., valid pay-and-display parking receipt or other supporting documentation etc.) that establishes that the parking ticket meets the criteria for cancellation in the Parking Ticket Cancellation Guidelines.*

*Fax/E-mail Service for customers with valid Pay-and-Display receipts or Accessibility/Disabled Permits only: Customers with valid pay-and-display receipts and/or accessibility/disabled permits can fax their written request for cancellation or consideration, along with copies of the receipts or permits, to the City's Parking Ticket Operations – Investigations Unit at: 416-696-4194, or scan and e-mail your request and documents to: [parkingdisputes@toronto.ca](mailto:parkingdisputes@toronto.ca).*

*Please ensure you provide a contact telephone number, email address or mailing address as staff will advise of the outcome of the investigation by telephone, email or in writing.*

*The most common example of a time-limited offence is when a driver parks beyond the time indicated on a pay-and-display parking receipt.*

**The 10-minute time allowance period applies to the following offences and only tickets issued for these offences can be considered for cancellation:**

***Restricted time-limited offences to which a 10-minute time allowance may apply:***

- ***Park Fail to Deposit Fee in Machine (Meter or Pay and Display Machines – Offence Code 207: \$30.00)***
- ***Park Fail to Display Receipt in Windshield (Offence Code 210: \$30.00)***

*Note: The minimum time purchased must be no less than ten minutes.*

*When does the time allowance provision not apply?*

*Note that the 10-minute time allowance identified within the cancellation guidelines does NOT apply to tickets issued for:*

- *parking during prohibited times on major arterial routes or during rush hour periods (even where a pay-and-display ticket may have been purchased)*
- *2am – 7am “snow clearing” bylaw offences (during weather events).*
- *Any other offence not listed above where parking was temporarily restricted due to weather, traffic, construction or other events.*

*The time allowance provision also does not apply in cases where the expiry time relates to a change in parking restrictions (e.g., where one can park between certain posted hours, but parking is prohibited beyond those specified hours due to permit requirements, changes in traffic flow etc.)*

*How do I get my ticket reviewed and considered for cancellation?*

***The time allowance provision established in the Cancellation Guidelines apply only to time-limited parking offences.***

*A number of factors are considered before a ticket may be cancelled. These include but are not limited to a vehicle or driver's previous offence history, abuse of time allowance cancellations, weather conditions and other factors that may have contributed to the excess time offence.*

*Offenders who are refused a cancellation under this provision and wish to further dispute their ticket, must attend in person at one of the City's four parking ticket counters (First Appearance Facilities) listed on the back of the parking ticket.”*

Emphasis Added

There are a few matters to break down, I will start with the first one:

The offence issued to the owner of the vehicle is: **“Stand vehicle – signed highway during prohibited (times/days)”**

This Bylaw issued is *not* a bylaw that is considered for cancellation under this section of the cancellation guidelines.



Date Issued: June 30, 2023

The next issue is the information to provide to the investigation offices of the City of Toronto. There was no evidence provided at the hearing that any information was submitted directly to the investigation offices of the City of Toronto for review.

The Driver stated in the hearing, that the I should not consider the parking history, although this provision states that parking history as well as other factors are considered prior to cancelling a ticket.

I had shown the driver the parking history of the vehicle at the beginning of the hearing and confirmed that there was a recent ticket, after the one before me had been issued with the same penalty.

The Driver stated in the hearing that he had left the car for 10 minutes to find a Green P parking sign.

Driver also stated that he did not have a Green P parking receipt to provide at the date and time of the hearing

Driver stated he moved his car and parked somewhere else and paid for parking and did not provide that receipt upon request at the hearing.

The Bylaws are clear, the penalty cancellation Guidelines are clear, and the signs that were posted in this instance was the car was not to be stopped weather occupied or not in this area.

The onus is on the driver to ensure the car is parked in an area that does not interfere with any City Bylaws.

There was no evidence of a ticket purchase which is *required* in the cancellation guidelines to be provided. There was no proof of the timing because of this.

No evidence provided of undue hardship at the hearing for me to consider.

Toronto Municipal Code 610-2.1. B states: "If a vehicle has been left parked, standing or stopped in contravention of a designated bylaw provision, the vehicle owner shall, upon issuance of a penalty notice, be liable to pay to the City an administrative penalty"

## **DECISION**

Decision was held down for 24 hours and produced on June 30,2022

Penalty Affirmed.

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Kayla Stephenson  
Hearing Officer

**Date Signed: June 30, 2023**