



CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

1900 SW 4th Avenue, Room 3100

Portland, OR 97201

phone: (503) 823-7307 - fax: (503) 823-4347

web: www.portlandoregon.gov/auditor/hearings



HEARINGS OFFICER'S ORDER

APPEAL OF PHILIP W. WENDT

CASE NO. 1120009

DESCRIPTION OF VEHICLE: Volvo S60 (OR 449FFU)

DATE OF HEARING: January 24, 2012

APPEARANCES:

Mr. Phillip Wendt, Appellant

HEARINGS OFFICER: Ms. Kimberly M. Graves

Mr. Wendt appeared at the hearing and testified on his 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 Mr. Wendt and the documents admitted into evidence (Exhibits 1 through and including 13).

Summary of Evidence:

Mr. Wendt submitted a Tow Hearings Request Form, and attached hand-written letter, Exhibits 1 and 2, regarding the tow of his vehicle on January 1, 2012. Mr. Wendt indicated that his vehicle was towed on January 1, 2012 from SW Oak and 10th. Mr. Wendt indicated that he drove to SW Oak and 10th to assist a friend who was sick. Mr. Wendt indicated that police and an ambulance subsequently responded to assist his friend, and his friend was taken by ambulance to the hospital. Mr. Wendt writes that his vehicle was "standing" at the intersection while he was waiting with his friend. Mr. Wendt writes that an officer took his keys and had his vehicle towed. Mr. Wendt writes that if the officer had returned his keys, he could have driven his vehicle out of the roadway so that it would not have been a hazard. Mr. Wendt appeared at the hearing and testified consistent with his written statement. Mr. Wendt added that his vehicle was not in a parking space when it was towed.

The City submitted Exhibits 6 through, and including, 12 regarding the tow of Mr. Wendt's vehicle on January 1, 2012. Exhibit 6 is an Investigation Report written by Officer Simon of the Portland Police Bureau. The report indicates that on January 1, 2012, Mr. Wendt's vehicle was towed from 1022 W Burnside. The narrative portion of the report reads "We responded to the location on report of a subject in need of medical attention. The subject was taken to the hospital. A vehicle he was the passenger in was left in the roadway of SW Oak. The vehicle was tagged and towed as a hazard." Exhibit 7 appears to be a duplicate of Exhibit 6 with a handwritten notation at the top about the vehicle being towed as a hazard. Exhibit 8 is a copy of a Parking Violation issued to Mr. Wendt.

Applicable Law:

The Hearings Officer must find a tow is valid if the person ordering the tow followed the relevant laws/rules. In this case, the relevant laws/rules can be 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 Q, PCC 16.30.210 A.2 and PCC 16.30.220 A and D. PCC 16.20.120 Q states that it is unlawful to park or stop a vehicle in a manner that creates a traffic hazard impeding the safe movement of vehicular or pedestrian traffic. PCC 16.30.210 A.2 states that a vehicle may be towed and held at the expense of the owner or person entitled to possession thereof if the vehicle is in the public right-of-way and the vehicle is parked/stopped unlawfully in a manner that may be hazardous to traffic. PCC 16.30.220 A authorizes a police officer to order a vehicle towed, without prior notice, if the vehicle is impeding or likely to impede the normal flow of vehicular traffic. PCC 16.30.220 D permits a police officer to order a vehicle towed, without prior notice, if the vehicle poses an immediate danger to public safety.

Findings of Fact and Conclusions of Law:

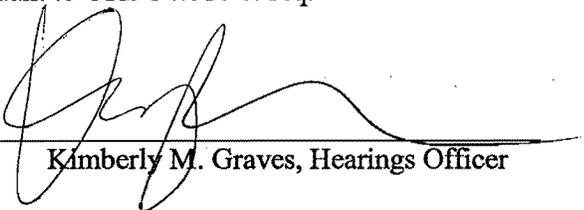
The Hearings Officer finds that on January 1, 2012, Mr. Wendt parked his vehicle in a roadway in a manner which created a hazard to other drivers. The Hearings Officer notes that if a driver of a vehicle is present on scene, and able to lawfully move their vehicle from the roadway, a vehicle should not be towed merely to alleviate a hazardous situation. The Hearings Officer finds that there is no evidence in the record to indicate why Mr. Wendt was not permitted to move his vehicle from the roadway, and avoid a tow of his vehicle. The Hearings Officer finds that the City has failed to meet its burden with regard to the tow of Mr. Wendt’s vehicle. The Hearings Officer finds the tow of Mr. Wendt’s vehicle to be 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: January 25, 2012
KMG:jeg



Kimberly M. Graves, Hearings Officer

Enclosure

Bureau: PPB
Tow Number: 6

If a refund has been authorized, it will be sent from the City’s Accounts Payable Office. Please allow at least 3 weeks.

Exhibit #	Description	Submitted by	Disposition
1	Tow Hearing Request Form	Wendt, Philip W.	Received
2	Request Form Attached page	Wendt, Philip W.	Received
3	Tow Desk printout	Hearings Office	Received
4	Notice of Hearing	Hearings Office	Received
5	Statement of Rights and Procedures	Hearings	Received
6	Investigation Report	Police Records	Received
7	Investigation Report	Police Records	Received

8	Parking Violation: U209291	Police Records	Received
9	Towed Vehicle Record	Police Records	Received
10	Police Records printout	Police Records	Received
11	OR Driver License copy for Philip William Wendt	Police Records	Received
12	Vehicle Release	Police Records	Received
13	Receipts	Wendt, Philip W.	Received