



CITY OF PORTLAND

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HEARINGS OFFICER'S ORDER

APPEAL OF SERGEANTS TOWING

CASE NO. 3120067

DATE OF HEARING: March 2, 2012

APPEARANCES:

Mr. Jesse Copeland, on behalf of Sergeants Towing

Ms. Marian Gaylord, on behalf of the City

HEARINGS OFFICER: Ms. Kimberly M. Graves

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Mr. Jesse Copeland, manager of Sergeants Towing (“Appellant”) appeared and presented argument on behalf of the Appellant. Ms. Marian Gaylord, Towing Coordinator for the City of Portland, appeared and presented argument on behalf of the City. Exhibits 1 through 18 were admitted into the evidentiary record without objection from the City or Appellant.

Ms. Gaylord testified that she received a complaint on January 4, 2012, from Lyra Butler-Denman regarding the tow of her vehicle on December 18, 2011, from 1406 SE 12th Avenue by Sergeants Towing. Ms. Gaylord stated that Ms. Butler-Denman indicated that she parked her vehicle at the location to use the ATM machine. Ms. Butler-Denman stated that she was at the location for less than 15 minutes and her vehicle was towed. Ms. Gaylord testified that she sent notice of the complaint to Sergeants Towing on January 11, 2012, and asked that Sergeants send her a statement from the tow truck driver and photos of Ms. Butler-Denman’s vehicle. Ms. Gaylord testified that the Notice sent to Sergeants requested that the documents be received by January 25, 2012. Ms. Gaylord testified that a timeframe of two weeks is routinely given for the submission of documents when a complaint is received. Ms. Gaylord testified that the two week timeframe is not set out in the Portland City Code, but that she has chosen the timeframe because of the need to process complaints quickly in order to respond to the citizen complainant in a timely fashion. Ms. Gaylord testified that she received a response from Sergeants on January 25, 2012, at 6:15 p.m. Ms. Gaylord testified that along with the statement about the tow of Ms. Butler-Denman’s vehicle, Sergeants sent the wrong photos. Ms. Gaylord testified that

the photos submitted were for a different day, vehicle and location. In addition to the wrong photos being submitted, Ms. Gaylord testified that she determined that Sergeants had failed to report the release of Ms. Butler-Denman's vehicle as required. Ms. Gaylord testified that Sergeants is required to report to the Tow Desk within 8 hours of the release of a vehicle. Ms. Gaylord testified that Ms. Butler-Denman's vehicle was released on December 18, 2011, but that the release of the vehicle was not reported until January 8, 2012. Ms. Gaylord testified that the Tow Desk did receive a report of released vehicles on December 18, 2011, from Sergeants, but that Ms. Butler-Denman's vehicle was not on the list.

Ms. Gaylord testified that she determined that Sergeants had committed two violations: 1) Sergeants failed to support the validity of the tow of Ms. Butler-Denman's vehicle by failing to submit the required photos of the vehicle, and 2) Sergeants had failed to report the release of Ms. Butler-Denman's vehicle as required. Ms. Gaylord testified that as a result of the violation she ordered Sergeants to refund half the cost of the tow, and to pay \$150 in civil penalties.

Upon questioning, Ms. Gaylord indicated that after the January 25, 2012, deadline, she did receive a copy of the photos of Ms. Butler-Denman's vehicle taken prior to towing. Ms. Gaylord indicated that the photos were "adequate" to prove the validity of the tow, had then been received before the deadline.

The Hearings Officer reviewed the Tow Complaint Form, Exhibit 4, written by Ms. Butler-Denman. The Complaint Form indicates that Ms. Butler-Denman parked her vehicle to use the ATM. Ms. Butler-Denman writes that her passengers exited the vehicle to use the bathroom, and that she had to look for them after she was done at the ATM. Ms. Butler-Denman indicates that it took approximately 15 minutes to round up her passengers, and when she returned to where her vehicle had been parked, she learned that it had been towed.

Mr. Copeland testified that he did submit his response to Ms. Gaylord on the last day for submission. Mr. Copeland testified that he did not look at the photos he sent to Ms. Gaylord before sending them, and instead that he relied on the file name found in his computer. Mr. Copeland testified that his driver had mislabeled the file resulting in the wrong photos being sent. Mr. Copeland submitted Exhibit 18, a screenshot of the photo file from his computer, to further illustrate how the error occurred. Mr. Copeland also submitted Exhibit 16, the photos of Ms. Butler-Denman's vehicle taken prior to towing. Mr. Copeland stated that he would have been able to send the correct photos over almost immediately, had he been notified of the error prior to Ms. Gaylord issuing her Final Determination. Mr. Copeland stated that he believes that the City is being inflexible in a situation where the driver has admitted wrongdoing. Regarding the notification to the Tow Desk, Mr. Copeland testified that his dispatcher faxes a report to the Tow Desk each night. Mr. Copeland testified that Exhibit 9 is a copy of the report faxed to the Tow Desk on December 18, 2011, showing the release of Ms. Butler-Denman's vehicle. Mr. Copeland testified that he does not have a fax confirmation for the report, but indicated that there is also no evidence that Sergeants is any more at fault than the Tow Desk. Mr. Copeland stated that the following month he received a report from the Tow Desk indicating that the three vehicles listed on Exhibit 9 had not been reported as released, and at that time Exhibit 12 was faxed to the Tow Desk. Mr. Copeland testified that prior to the hearing he had faxed a document to the Tow Desk only to receive a call from the Tow Desk saying that the fax was not received. Mr. Copeland submitted Exhibit 17, a copy of two fax confirmations to support his statement.

In closing, Ms. Gaylord stated that the photos towing companies are required to take prior to towing a vehicle are very important when complaints are received. Ms. Gaylord stated that she has an obligation to process complaints in a timely manner, and a timely response from the towing company is necessary to allow her to do so. Ms. Gaylord stated that it is the responsibility of the towing company to ensure that they are following the rules set out in the code, and to ensure that the faxes they send are being received.

In closing, Mr. Copeland stated that he sees two different issues: 1) whether there was a failure by Sergeants to notify the tow desk properly and to submit the photos in a timely manner, and 2) whether there was a failure to prove the validity of the tow. Mr. Copeland stated that he believes that any issues lie between the City and Sergeants, and not between Sergeants and Ms. Butler-Denman. Mr. Copeland stated that Ms. Butler-Denman admitted wrongdoing and he does not believe that she is entitled to a refund.

The Hearings Officer finds that three issues are to be decided: 1) Did Sergeants violate any provision of the Portland City Code or Administrative Rules by failing to submit proper photos prior to the deadline set by the City? 2) Did Sergeants fail to report the release of Ms. Butler-Denman's vehicle as required by the Portland City Code or Administrative Rules? and 3) Did Sergeants violate any provision of the Portland City Code or Administrative Rules with respect to the tow of Ms. Butler-Denman's vehicle?

LIC 9.04 Photographs provides that "prior to performing a patrol-authorized PPI tow, the PPI tower shall photograph the vehicle to be towed. Such photograph(s) shall illustrate the conditions of the vehicle's location that warrant such an impound and be made available upon request by the Towing Coordinator, pursuant to a complaint investigation or audit." PCC 7.24.016N provides that PPI towers shall "notify the local police agency of the release of a vehicle to the registered owner/owner's agent . . . within eight (8) hours after the release."

LIC 9.01 Retention and Inspection of Records provides that "in the event that a complaint is received by the Towing Coordinator, the subject PPI tower shall, within 24 hours of written notice from the City, provide documentation of the tow. Such documentation may include, but not be limited to, copy of the tow invoice, copy of a patrol contract or specific authorization, and photograph(s) taken at the time of the tow."

The Hearings Officer finds that Ms. Gaylord, in her role as the City Towing Coordinator, may exercise discretion with respect to the processing of citizen complaints. The Hearings Officer finds that Ms. Gaylord may request documentation from a tower in response to a complaint, and may set reasonable timeframes within which said tower must provide documentation to support the subject tow. The Hearings Officer notes that LIC 9.01 indicates that a timeframe of 24 hours is all that is required after written notice of a complaint is submitted to the tower from the City. LIC 9.01 was not raised at the hearing by Ms. Gaylord, as such the requirements set out in LIC 9.01 will not be considered when making this decision. The Hearings Officer finds that the two week timeframe set out by Ms. Gaylord is a reasonable timeframe within which Ms. Gaylord should expect a response from a tower. The Hearings Officer finds that the response sent by Sergeants to Ms. Gaylord, regarding the tow of Ms. Butler-Denman's vehicle, was sent within the two week timeframe, but was incomplete. The Hearings Officer finds that Sergeants failure to submit a completed response to Ms. Gaylord within the two week timeframe was a violation of section LIC 9.04.

The Hearings Officer finds that Sergeants has an obligation to report to the Tow Desk the release of a vehicle within eight hours after the vehicle has been released. The Hearings Officer finds that Mr. Copeland has no personal knowledge about whether Exhibit 9 was faxed as required on December 18, 2011. The Hearings Officer finds that Exhibits 9 and 12 taken together indicate that the information contained in Exhibit 9 was not received by the Tow Desk on December 18, 2011, as required. The Hearings Officer finds that Sergeants failure to notify the Tow Desk of the release of Ms. Butler-Denman's vehicle within eight ours of its release was a violation of PCC 7.24.016.

The Hearings Officer finds that the only basis set forth by Ms. Gaylord for finding the tow of Ms. Butler-Denman's vehicle to be unsupported is that the photos of the vehicle were not received prior to the two week deadline. The Hearings Officer finds that the correct photos supported the tow of the vehicle. The Hearings Officer finds that Sergeants followed the rule set out in the PCC and the Administrative Rules with respect to the tow of Ms. Butler-Denman's vehicle. The Hearings Officer finds the tow of Ms. Butler-Denman's vehicle to be valid.

PCC 7.24.018 provides that failure to comply with any part of the PPI Code or the administrative Rules may be punishable by refund to the vehicle owner/owner's agent or civil penalty. The Determination assessed penalties as follows (Exhibit 10):

- A refund to Ms. Butler-Denman in the amount of half of the tow fees, \$110.00
- \$100 to the City of Portland for failure to provide photographic evidence
- \$50 to the City of Portland for failure to make timely report of the release of Ms. Butler-Denman's vehicle.

In accessing the validity of the penalties set out in the Determination letter, the Hearings Officer looks at the proven violations and seeks to identify the party harmed by each violation. The Hearings Officer finds that the City of Portland is the only party harmed by Sergeants actions. The Hearings Officer finds that Sergeants actions did not harm Ms. Butler-Denman, because Sergeants remedied their errors in a timely fashion and did not delay the investigation by Ms. Gaylord for a protracted period of time.

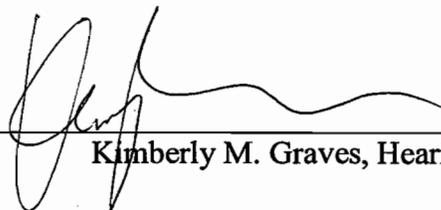
The Hearings Officer finds that the refund to Ms. Butler-Denman may not be assessed as the underlying violation of failure to prove the validity of the tow was not proven to exist. The Hearings Officer finds that the assessment of penalties, in the amounts described in Exhibit 10, for violations related to the failure to provide photographic evidence in a timely fashion and failure to make a timely report of the release are proper.

ORDER AND DETERMINATION:

1. Violations do exist related to Appellant's to provide photographic evidence in a timely fashion and failure to make a timely report of the release; the penalties assessed in the Determination for these violations are valid.
2. Violations do not exist related to Appellant's failure to prove the validity of the tow of Ms. Butler-Denman's vehicle; the penalties assessed in the Determination for this violation are not valid.

3. This matter is remanded to the City of Portland Office of Management and Finance Regulatory Division to provide Appellant a revised Determination consistent with the above findings and this Order.
4. This order has been mailed to the parties on March 9, 2012.
5. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: March 9, 2012



Kimberly M. Graves, Hearings Officer

KMG:rs

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Appeal form page 1	Gaylord, Marian	Received
2	Appeal form page 2	Gaylord, Marian	Received
3	2/6/12 Staff Report	Gaylord, Marian	Received
4	Tow Complaint Form	Gaylord, Marian	Received
5	Impound Invoice	Gaylord, Marian	Received
6	1/11/12 letter, Jenny Farres to Sergeants Towing	Gaylord, Marian	Received
7	1/25/12 E-mail, Jesse Copeland to Gaylord	Gaylord, Marian	Received
8	Photos	Gaylord, Marian	Received
9	Vehicle Release Notification	Gaylord, Marian	Received
10	1/26/12 letter, Gaylord to Copeland	Gaylord, Marian	Received
11	1/26/12 e-mail, Copeland to Gaylord	Gaylord, Marian	Received
12	Vehicle Release Notification to Tow Desk	Gaylord, Marian	Received
13	Tow Desk printout	Gaylord, Marian	Received
14	Mailing List	Hearings Office	Received
15	Hearing Notice	Hearings Office	Received
16	Photos	Sergeants Towing,	Received
17	PPI Invoice # X28427	Sergeants Towing,	Received
18	Computer Screenprints	Sergeants Towing,	Received