

# CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

## Hearings Office

1900 SW 4<sup>th</sup> Avenue, Room 3100

Portland, OR 97201

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

web: [www.portlandoregon.gov/auditor/hearings](http://www.portlandoregon.gov/auditor/hearings)



## HEARINGS OFFICER'S ORDER

### APPEAL OF Sergeants Towing

CASE NO. 3120132

DATE OF HEARING: March 30, 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 ("Gaylord"), Towing Coordinator for the City of Portland, appeared and presented argument on behalf of the City. Exhibits 1 through 14 were admitted into the evidentiary record without objection from the City or Appellant.

Gaylord testified that she received a citizen complaint from Mr. David Goldblatt ("Goldblatt") regarding the tow of his vehicle on October 14, 2011, from 1212 SE Hawthorne by Sergeants Towing. Gaylord testified that Goldblatt told her that he parked his vehicle in a lot where he didn't see any signs regulating parking. Gaylord testified that Goldblatt told her that when he returned he found that his vehicle had been towed. Gaylord testified that Goldblatt told her that upon returning to where his car had been parked, he did notice a Sergeants Towing sign that was near the entrance to the lot; however, the sign was posted too high for him to have seen it from his sedan.

Gaylord testified that she sent a request to Sergeants Towing for photos and a report about the tow of Goldblatt's vehicle (the "Vehicle"). (Exhibit 6) Gaylord testified that she received photos, but that the photos did not properly document the signage at the lot. Gaylord testified that the photos, Exhibit 7c, show the rear of the Vehicle and one Sergeants Towing sign. Gaylord testified that Appellant sent her an enlarged version of one of the photos and indicated that the back of another Sergeants Towing sign can be seen in the background. Gaylord testified that she is unable to identify the sign as a Sergeants Towing sign based on the angle of the photo. Gaylord testified that she sent a Determination Letter,

Exhibit 8, to Appellant indicating that she does not believe that the photos submitted support the tow, and that a refund of \$111 is ordered to Goldblatt. Gaylord testified that she later reconsidered her initial determination, and suggested to Appellant that a civil penalty of \$75 may be more appropriate, but Appellant indicated that he wished to appeal the finding in the Determination Letter.

The Hearings Officer reviewed an email sent to Gaylord by Goldblatt, Exhibit 5. The email contains a description from Goldblatt of the area where the Vehicle was parked and a number of photos. Unfortunately, due to the size of the photos, the photos provide little information to assist the Hearings Officer in making a determination in this matter. Gaylord testified that the photo size was too small for her to use in making her determination as well.

Appellant testified that the photo requirement of Administrative Rule LIC 9.04 states that the photos must show the condition that warrants the tow. Appellant testified that the photos he submitted show the lot where Goldblatt was parked and a sign indicating Sergeants Towing has authority to tow from the lot. Appellant indicated that he believes the submitted photos are sufficient, and requiring a driver to take photos of all entrances to the lot is too burdensome. Appellant submitted additional photos at the hearing. Appellant submitted enlarged copies of Exhibit 7c, and indicated with a circle on page four shows where the second Sergeants Towing sign is within the lot. (Exhibit 13) Appellant also submitted additional photos of the lot and Sergeants Towing signs. (Exhibit 14) Appellant testified that he measured the Sergeants Towing sign closest to Hawthorne Blvd. and that the center of the sign is posted 7 feet, 4 inches from the ground. Appellant testified that he did not measure the other sign posted on the Ladd St. side of the lot, but that his driver told him that the sign was posted "4 feet high." Appellant testified that the signs are "the size required by the city." The Hearings Officer notes that the City requires Towing signs to be 18 inches by 24 inches. (see LIC 9.02)

In closing, Gaylord stated that the photos towing companies are required to take prior to towing a vehicle are very important when complaints are received. Gaylord stated she believes that a broader reading of Administrative Rule LIC 9.04 is necessary and that the photos taken prior to towing must be sufficient to show that the lot is in compliance with the regulations for Private Property Impounds. Gaylord stated that a tow is not "warranted" unless the lot is in compliance, and therefore the submitted photos must show all of the signage necessary to demonstrate that the lot is in compliance.

In closing, Appellant stated that he believes the requirement to take photos of all of the entrances to lot is unreasonable and unnecessary.

The Hearings Officer finds that two issues are to be decided:

- 1) Are the photos submitted by Sergeants Towing sufficient to meet the requirement set out in Administrative Rule LIC 9.04?
- 2) Was the signage at the lot sufficient under the Portland City Code 7.24.014 and Administrative Rule LIC 9.02 to allow for the tow of the 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."

The Hearings Officer adopts Gaylord's interpretation of Administrative Rule LIC 9.04 and finds that in order for photos to "illustrate the conditions of the vehicle's location that warrant such an impound," the photos must show that the area where the vehicle is parked is in compliance with the requirements of Administrative Rule LIC 9.04. The Hearings Officer finds that, at a minimum, when the area to be towed from is a lot, the photos must show the signage present at each entryway into the lot. The Hearings Officer declines to find that the photos must show the *exact* height and placement of the sign, but finds instead that the photos must be such that the presence of the required signage is apparent.

The Hearings Officer finds that the photos submitted by Appellant related to the tow of the Vehicle were not sufficient to depict the presence of a sign on the Hawthorne Blvd. side of the lot. The Hearings Officer finds that Appellant failed to submit photos which illustrated the conditions that warranted the tow of the Vehicle. The Hearings Officer finds that Appellant's failure to take photos which illustrated the conditions that warranted the tow of the Vehicle is a violation of Administrative Rule LIC 9.04.

LIC 9.02 Signage provides, in part, that:

"it shall be unlawful to tow a vehicle from a private parking facility unless the private parking facility meets the following signage requirements: 1. At least one sign shall be posted and readily visible at each entryway into the parking lot, not more than 10 feet from the public right of way or street edge. Such signs shall: A. Be posted so that the center of the sign is not more than eight (8) feet nor less than four (4) feet above the ground; and B. Be at least 18" x 24" in size."

The Hearings Officer finds that, separate and distinct from the obligation to take sufficient photos at the time of a tow, Appellant has an obligation to ensure that the lots they tow from have signage which complies with the requirements in Administrative Rule LIC 9.02. The Hearings Officer finds that, based on the photos submitted by Appellant (see page 1 of Exhibit 13), the signage at the lot located at 1212 SE Hawthorne Blvd. does not meet the requirements of Administrative Rule LIC 9.02. The Hearings Officer finds that the sign depicted in page 1 of Exhibit 13 is not four feet from the ground as required. The Hearings Officer finds that Appellant's failure to ensure that the signage in the lot located at 1212 SE Hawthorne Blvd. is sufficient is a violation of Administrative Rule LIC 9.02.

The Hearings Officer finds that insufficient signage in a lot invalidates the tow of a vehicle from said lot. The Hearings Officer the tow of the Vehicle to be invalid.

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 8):

- A refund to Goldblatt in the amount of half of the tow fees, \$111.00.

Gaylord indicated in Exhibit 4 to the Hearings Office that she also offered Appellant the option of paying a penalty of \$75 to the City of Portland instead of refunding money to Goldblatt.

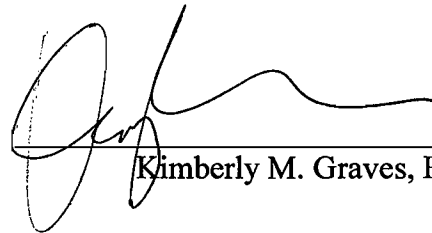
In accessing the validity of the penalties, the Hearings Officer looks at the proven violations and seeks to identify the party harmed by each violation. The Hearings Officer finds that the City of Portland is the party harmed by Appellant's failure to take sufficient photos of the area where the Vehicle was parked, because the lack of sufficient photos hampers Gaylord's ability to fully assess the validity of the tow. The Hearings Officer finds that Goldblatt is the victim of Sergeants failure to ensure that the lot located at 1212 SE Hawthorne Blvd. is properly signed. Accordingly, the Hearings Officer finds that Goldblatt should receive a full refund of the fees associated with the tow of his vehicle. The Hearings Officer finds that the penalty assessed in Exhibit 8 for the failure to take sufficient photos prior to towing is appropriate.

#### ORDER AND DETERMINATION:

1. Violations do exist related to Appellant's failure to take proper photos prior to towing, and failure to have adequate signage.
2. Appellant is ordered to issue a refund in the amount of \$220.50 to Goldblatt.
3. Appellant is ordered to pay a civil penalty of \$75 to the City of Portland.
4. 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.
5. This order has been mailed to the parties on April 6, 2012.
6. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: April 6, 2012

KMG:jeg



Kimberly M. Graves, Hearings Officer

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Fax Cover - indicating full documents sent by fax and mail	Gaylord, Marian	Received
2	Appeal Form page 1	Gaylord, Marian	Received
3	Appeal Form page 2	Gaylord, Marian	Received
4	3/5/12 Staff Report	Gaylord, Marian	Received
5	11/2/11 Email with photos from David Goldblatt	Gaylord, Marian	Received
5a	Copy of Private Property Impound Notice	Gaylord, Marian	Received
6	1/18/12 Letter from Jenny Farres to Sergeants Towing	Gaylord, Marian	Received
7	1/25/12 Email from Jesse Copeland	Gaylord, Marian	Received
7a	Private Property Impound Authorization Agreement	Gaylord, Marian	Received
7b	Patrol Addendum	Gaylord, Marian	Received

7c	Microsoft Office Picture Manager printouts	Gaylord, Marian	Received
8	2/15/12 Letter to Jesse Copeland from Marian Gaylord	Gaylord, Marian	Received
9	2/15/12 Email from Jesse Copeland to Marian Gaylord	Gaylord, Marian	Received
9a	Enlarged photo of parking lot	Gaylord, Marian	Received
10	03/02/12 Email from Marian Gaylord to Jesse Copeland	Gaylord, Marian	Received
11	Mailing List	Hearings Office	Received
12	Notice of Hearing	Hearings Office	Received
13	Larger color photo set	Sergeants Towing,	Received
14	Daylight Large photo set	Sergeants Towing,	Received