



CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF BENJAMIN COWAN

CASE NO. 1120105

DESCRIPTION OF VEHICLE: Toyota Rav4 (OR 878FJG)

DATE OF HEARING: June 21, 2012

APPEARANCES:

Mr. Benjamin Cowan, Appellant

HEARINGS OFFICER: Ms. Kimberly M. Graves

Mr. Cowan 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. Cowan and the documents admitted into evidence (Exhibits 1 through and including 13).

Summary of Evidence:

Mr. Cowan submitted a Tow Hearing Request Form, Exhibit 1, regarding the tow of his vehicle on May 30, 2012 from NW Slavin Road. Mr. Cowan writes, "My car was parked near the dead end of SW Slavin Rd behind Greenbriar Village Apts. where I live. I was parked on a portion of the road where parking is permitted and was not impeding traffic in any way. This is a dead end and the only cars who use it are residents of Greenbriar Village, who are parking in the very same spots as I. Regardless my car was not blocking their passage. I have been parking in the same area for many months, everyday, along with many others and there has never been any issue or warning." Mr. Cowan appeared at the hearing and submitted two photos, Exhibit 12, which shows the area where his vehicle was parked prior to towing. Mr. Cowan testified that his vehicle is shown in the photos in the location where he believes it was parked prior to towing. The photo shows Mr. Cowan's vehicle parked along the edge of the roadway with all 4 tires in the dirt next to the roadway. In front of Mr. Cowan's vehicle is a street sign which reads "Street Closed Ahead." Under the street closure sign is a No Parking sign with an arrow pointing away from Mr. Cowan's vehicle.

The city submitted Exhibits 5 through, and including, 11 regarding the tow of Mr. Cowan's vehicle. Exhibit 5 is a Towed Vehicle Record showing that the vehicle was towed because it was a hazard. Exhibit 7 is an Investigation Report which reads "we have received complaints of parking issued from the nearby apartments around the 5100 Block of SW Slavin Rd. While enforcing the parking laws of the area, the above vehicle was parked nearly

halfway into the SB traffic lane of SW Slavin Rd.” The report from the officer does not contain any photos taken of the vehicle prior to towing. Exhibit 8 is a Notice of Tow form again indicating that the vehicle was a hazard.

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 many 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 May 30, 2012, Mr. Cowan’s vehicle was parked on SW Slavin Road. The Hearings Officer finds Mr. Cowan credible in his testimony that his vehicle was parked as indicated in the photos in Exhibit 12, and was fully off of the roadway. The Hearings Officer notes that the burden lies with the City to demonstrate that the tow of the vehicle was valid, and that the vehicle was a hazard to vehicular or pedestrian traffic. The Hearings Officer finds that the City has failed to provide sufficient information to disprove the statement of Mr. Cowan, and therefore the City has failed to meet its burden with respect to the tow of Mr. Cowan’s vehicle. The Hearings Officer finds the tow of Mr. Cowan’s vehicle is not valid.

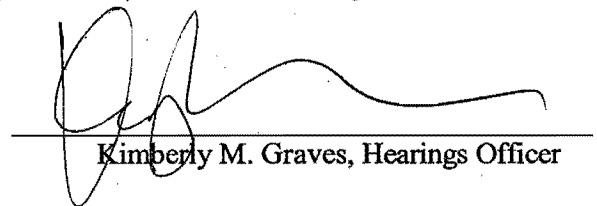
Order:

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: June 22, 2012
KMG:c2/cl

Enclosure



Kimberly M. Graves, Hearings Officer

Bureau: Police
Tow Number: 8674

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
<u>1</u>	<u>Tow Hearing Request Form</u>	<u>Cowan, Benjamin</u>	<u>Received</u>
<u>2</u>	<u>Tow Desk printout</u>	<u>Hearings Office</u>	<u>Received</u>
<u>3</u>	<u>Notice of Hearing</u>	<u>Hearings Office</u>	<u>Received</u>
<u>4</u>	<u>Statement of Rights and Procedures</u>	<u>Hearings Office</u>	<u>Received</u>
<u>5</u>	<u>Towed Vehicle Record</u>	<u>Police Records</u>	<u>Received</u>
<u>6</u>	<u>PPB Records printout</u>	<u>Police Records</u>	<u>Received</u>
<u>7</u>	<u>Investigation Report: Case 12-046180</u>	<u>Police Records</u>	<u>Received</u>
<u>8</u>	<u>Notice of Tow</u>	<u>Police Records</u>	<u>Received</u>
<u>9</u>	<u>Towed Vehicle Record Comments</u>	<u>Police Records</u>	<u>Received</u>
<u>10</u>	<u>Registration/Insurance ID/OR Driver License</u>	<u>Police Records</u>	<u>Received</u>
<u>11</u>	<u>Vehicle Release</u>	<u>Police Records</u>	<u>Received</u>
<u>12</u>	<u>Photos</u>	<u>Cowan, Benjamin</u>	<u>Received</u>
<u>13</u>	<u>Receipts</u>	<u>Cowan, Benjamin</u>	<u>Received</u>