



CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF BETH A. LAMAR

CASE NO. 1120217

DESCRIPTION OF VEHICLE: Honda Civic (OR 845GAB)

DATE OF HEARING: December 6, 2012

APPEARANCES:

None

HEARINGS OFFICER: Ms. Kimberly M. Graves

Ms. Lamar did not appear at the hearing on her own behalf. A Notice of Hearing was mailed to Ms. Lamar on November 30, 2012 to the address she provided when she request an appeal hearing. The Notice was not returned by the U.S. Mail Service, and Ms. Lamar did not contact the Hearings Officer prior to the hearing to request that the matter be rescheduled. 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 documents admitted into evidence (Exhibits 1 through and including 11).

Summary of Evidence:

Ms. Lamar submitted a hand-written letter, Exhibit 1, regarding the tow of her vehicle on November 18, 2012. Ms. Lamar indicates in Exhibit 1 that her vehicle was towed from a Chevron parking lot on "Fremont and MLK." Ms. Lamar writes that her vehicle was parked "in a safe place" and that she was told by the "manager of the store" that her vehicle "could stay there until morning." Ms. Lamar writes that she believes that the officer should have given her the option of having her vehicle picked up by a family member or friend. Ms. Lamar writes that the vehicle is insured and that she cannot afford the cost of the tow. Ms. Lamar also submitted a copy of the Notice of Tow, Exhibit 2, she received when her vehicle was towed. The Notice of Tow indicates that the vehicle was towed because an officer believed that it created a "hazard." Ms. Lamar also submitted a "Payment Receipt" for insurance, Exhibit 3. Ms. Lamar did not submit any other information regarding the tow of her vehicle.

The City submitted Exhibits 7 through, and including, 11 regarding the tow of Ms. Lamar's vehicle on November 18, 2012. Exhibit 7 is a Towed Vehicle Record which indicates that Ms. Lamar's vehicle was towed on November 18, 2012 around 10:00 p.m. from NE MLK/Fremont because it was creating a hazard. Exhibit 8 is a Custody Report from the Portland Police Bureau regarding Ms. Lamar. The report is lengthy and deals mostly

with the arrest of Ms. Lamar on November 18, 2012, and not the tow of Ms. Lamar's vehicle. The information relevant to the tow of Ms. Lamar's vehicle which is found in Exhibit 8 is that Ms. Lamar was arrested on November 18, 2012 and was unavailable to move her vehicle. The report also indicates that Ms. Lamar was taken into custody, by force, after resisting the efforts of the officers, and refusing to obey the officer's commands. Exhibit 9 is a Special Report which does not contain any information relevant to the tow of Ms. Lamar's vehicle. Exhibit 10 is a Force Data Collection Report related to the arrest of Ms. Lamar's passenger on November 18, 2012. Exhibit 10 contains limited information relevant to the tow of Ms. Lamar's vehicle. The information in Exhibit 10 related to the tow of the vehicle is that the vehicle was stopped in the "parking lot of the Chevron gas station at NE Fremont and NE Martin Luther King Blvd." Exhibit 11 is a second Custody Report from the Portland Police Bureau. This report is related to the passenger in Ms. Lamar's vehicle. In the second paragraph on page 2, the report reads "The vehicle pulled into the Chevron and drove up to one of the pumps before stopping." In the last paragraph on page 3 of the report, the report reads "Lamar's vehicle was blocking the pumps and was towed and cited on U258041." In summary, the information provided by the city indicates that Ms. Lamar's vehicle was stopped next to gas pumps at a Chevron gas station when Ms. Lamar and her only passenger were taken into custody, by force, by members of the Portland Police Bureau.

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 16.30.210 A.2 and PCC 16.30.220 A. 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 a public place and the vehicle is parked/stopped unlawfully in a manner that may be hazardous to traffic. Oregon Revised Statute 161.015 provides that a "public place" means a place to which the general public has access. 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.

Findings of Fact and Conclusions of Law:

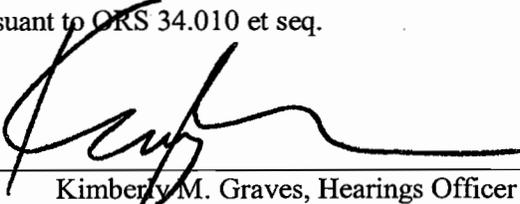
The Hearings Officer finds that on November 18, 2012 Ms. Lamar was driving her vehicle when she received a signal to stop from a member of the Portland Police Bureau. The Hearings Officer finds that Ms. Lamar stopped her vehicle at a Chevron gas station in a manner which blocked access to gas pumps. The Hearings Officer finds that both Ms. Lamar and her passenger were taken into custody by members of the Portland Police Bureau and there unable to move the vehicle from the area in front of the gas pumps. The Hearings Officer finds that the Portland City Code does not define public place, and therefore looks to the definition contained in the Oregon Revised Statutes to determine whether a privately owned gas station is a "public place" for purposes of towing vehicles. The Hearings Officer finds that a privately owned gas station is a premises open to the public and is a "public place" for purposes of City of Portland towing regulations. The Hearings Officer finds that Ms. Lamar's vehicle, where located, created a hazard to other drivers accessing the gas station, and that the vehicle impeded the normal flow of traffic into and out of the gas station. The Hearings Officer does not find credible Ms. Lamar's statement that on November 18, 2012 she asked the property owner whether the vehicle could remain on the property overnight, given the chaotic circumstances under which Ms. Lamar was taken into police custody. The Hearings Officer finds that the tow of Ms. Lamar's vehicle is valid.

Order:

Therefore, it is ordered that all towing and storage charges against the vehicle shall remain the responsibility of the vehicle's owner.

This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: December 11, 2012
KMG:c1/ml


Kimberly M. Graves, Hearings Officer

Enclosure

Bureau: Police
Tow Number: 18151

Exhibit #	Description	Submitted by	Disposition
1	Letter	Lamar, Beth A.	Received
2	Notice of Tow	Lamar, Beth A.	Received
3	Dairyland Auto Payment Receipt	Lamar, Beth A.	Received
4	Tow Desk printout	Hearings Office	Received
5	Hearing Notice	Hearings Office	Received
6	Notice of Rights and Procedures	Hearings Office	Received
7	Towed Vehicle Record	Police Records	Received
8	Custody Report	Police Records	Received
9	Special Report	Police Records	Received
10	Force Data Collection Report	Police Records	Received
11	Custody Report	Police Records	Received