



# CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

## Hearings Office

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## HEARINGS OFFICER'S ORDER

### APPEAL OF WARREN PULLING

CASE NO. 1130011

DESCRIPTION OF VEHICLE: Buick Lucerne (OR 519DUX)

DATE OF HEARING: January 29, 2013

### APPEARANCES:

Ms. Barbara Gaston, Authorized Representative for Appellant

HEARINGS OFFICER: Ms. Kimberly M. Graves

Ms. Barbara Gaston ("Gaston") appeared at the hearing and testified behalf of Warren Pulling ("Pulling"), her son. 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 Gaston and the documents admitted into evidence (Exhibits 1 through and including 14).

### Summary of Evidence:

Pulling submitted a Tow Hearing Request Form, Exhibit 1, regarding the tow of his vehicle on January 12, 2013. Mr. Pulling writes that he believes the tow of his vehicle is invalid because,

"I was pulled over by police & because the street was narrow I pulled over to a safe location for me & the officer. Upon my arrest I asked officer if I or he could put/park my car on the street or call to have my parents come pick up car. Officer didn't answer. My brother also asked officer, officer told him not to worry about that. Once I got to the police station I called to have my mom go pick up my car. It was already towed by City of Portland police. Put (sic) I was given a ticket for illegal or unsafe parking zone."

Gaston testified that Pulling called her from the police station and asked her to get his car. Ms. Gaston testified that she went to the location where Pulling said the car was parked and found that it had already been towed. Gaston testified that she returned to the location at a later time with her son and took photos of the area where the vehicle was parked. Gaston submitted the photos of the area at the hearing. The photos were labeled as Exhibit 14 and entered into the evidentiary record for this matter. The photos show a narrow, paved street with a park on one side and a hedge of bushes on the other side. There appears to be a driveway to a home in approximately the middle of the block. The street appears to be a through street. There are no parking regulation signs visible in any of the photos. Gaston testified that Pulling's vehicle was parked on the side of the street closest to the park. Gaston testified that other vehicles could get around Pulling's vehicle where it was parked.

The City submitted Exhibits 6 through, and including, 13 for the Hearings Officer's consideration. The majority of the information in the Exhibits relates to a criminal investigation and multiple persons arrested. The Hearings Officer will summarize and consider only the information relevant to the tow of Pulling's vehicle. Exhibit 6 is a Towed Vehicle Record which indicates that Pulling's vehicle was towed on January 12, 2013 from 85280 N Chicago. The violation listed as the basis for the tow is that the vehicle was a hazard. Exhibit 7 is an Investigation Report from the Portland Police Bureau. The information in Exhibit 7 relates almost entirely to a criminal investigation. The information in Exhibit 7 related to the tow of Pulling's vehicle can be found on page 3 and page 4 of the report. The information related to the tow reads: "I caught up to the car at the end of the block and pulled it over... The vehicle was towed for a hazard by 21 century towing." The remaining exhibits relate entirely to the criminal investigation and do not relate to the tow of Pulling's vehicle.

**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 the city has the burden to prove that the tow of Pulling's vehicle is valid. The city has indicated that Pulling's vehicle was towed because it was a "hazard", though the city has not provided any information to indicate how/why the vehicle created a hazard. Gaston has testified that the vehicle was not blocking the roadway and that there was no signage present to indicate that parking was prohibited. The Hearings Officer finds that the city must provide some supporting information to indicate why/how the vehicle was a hazard for the tow to be found valid. The Hearings Officer finds that the city has not provided sufficient information in this matter to overcome the contradictory testimony of Gaston that the vehicle was not a hazard. The Hearings Officer finds the tow of Pulling's vehicle is not valid.

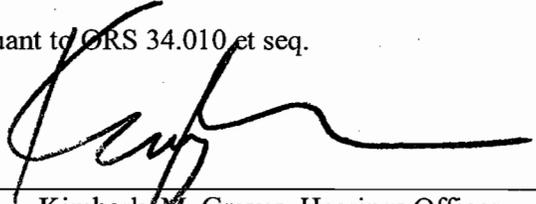
**Order:**

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 appellant.

**In order for the appellant to receive reimbursement, a complete and legible copy of the towing and storage bill must be furnished to the Hearings Office by March 1, 2013.**

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

Dated: January 30, 2013  
KMG:c2/m1

  
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Kimberly M. Graves, Hearings Officer

Enclosure

Bureau: Police  
Tow Number: 702

If a refund has been authorized, it will be sent from the City's Accounts Payable Office. Please allow at least 4 weeks.

<b>Exhibit #</b>	<b>Description</b>	<b>Submitted by</b>	<b>Disposition</b>
1	Tow Hearing Request Form	Pulling, Warren	Received
2	Notice of Towed Vehicle	Pulling, Warren	Received
3	Tow Desk printout	Hearings Office	Received
4	Notice of Hearing	Hearings Office	Received
5	Statement of Rights and Procedures	Hearings Office	Received
6	Towed Vehicle Record	Police Records	Received
7	Investigation Report	Police Records	Received
8	Custody Report by Officer Thomas B. Stoffel Jr.	Police Records	Received
9	Custody Report by Officer Joseph Sharpe	Police Records	Received
10	Custody Report by Officer Jessica Brainard	Police Records	Received
11	Custody Report by Officer Kyle L. Green	Police Records	Received
12	Special Report	Police Records	Received
13	Forensic Evidence Division Special Report	Police Records	Received
14	Photos	Gaston, Barbara (Authorized Rep.)	Received