



CITY OF
PORTLAND, OREGON
OFFICE OF THE CITY AUDITOR
Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF AARON R. VARHOLA

CASE NO. 1090242

DESCRIPTION OF VEHICLE: Subaru Impreza Outback (OR YFK929)

DATE OF HEARING: November 12, 2009

APPEARANCES:

Aaron R. Varhola, appellant

HEARINGS OFFICER: Mr. Gregory J. Frank

Mr. Aaron R. Varhola appeared and testified on his own behalf at the hearing. Ms. Amy Sacks, wife of Mr. Varhola, appeared and testified on Mr. Varhola's behalf. Mr. Varhola did not object to the admission of any of the documents in the file (Exhibits 1 through and including 6). Mr. Varhola offered Exhibits 7 through and including 12. The Hearings Officer makes this decision based upon the testimony of Mr. Varhola, Ms. Sacks and Exhibits 1 through and including 12.

Mr. Varhola's vehicle was towed on October 30, 2009. Exhibit 6, a police report submitted by the officer who ordered the tow, states in relevant part:

"Dispatched to the listed address on a report of a parking problem. We arrived and found (T) was blocking the driveway of the address. I found a phone number in PPDS for the registered owner of (T) but no one answered. We cited the car for blocking the driveway and had it towed. The car was located and could not be inventoried."

Mr. Varhola testified that at approximately 7:00 p.m. on October 30, 2009 he and his wife traveled on NW 22nd to the vicinity of NW Kearney and NW Johnson, and parked on the east side of the street. Mr. Varhola stated that he made an initial parking attempt and his wife got out of the car and informed him that he was parked too far from the curb. Mr. Varhola stated that he observed a temporary no parking sign, read the sign and determined that the parking restrictions did not apply to the time he intended to be parked at this location. (Exhibits 8 and 9). Mr. Varhola also testified that he noted a driveway accessing a duplex and he made sure that his car was parked well back from the driveway. Mr. Varhola testified that his vehicle was parked, on the evening it was towed, at the location shown in Exhibits 7, 10, and 11). Mr. Varhola, consistent with the police officer's statement, stated that when he arrived home late the evening of October 30, 2009 there was a phone message from a Portland Police officer.

Ms. Sacks' testimony generally confirmed Mr. Varhola's testimony. Ms. Sacks stated that when Mr. Varhola was parking she was watching, and she indicated that the vehicle was not in front of a driveway.

The Hearings Officer must find a tow valid if the Hearings Officer finds that the officer ordering the tow followed the relevant laws/rules. In this case, an officer could lawfully order Mr. Varhola's vehicle towed if Mr. Varhola's vehicle was parked on the public right-of-way and blocking a driveway (Portland City Code 16.30.210 9. and 16.30.220 B.). The police officer described, generally, in his/her written report (Exhibit 6) that he/she found Mr. Varhola's vehicle "blocking the driveway." Mr. Varhola and Ms. Sacks testified, on the evening the vehicle was towed, Mr. Varhola took great care in parking in a legal location; noticing a temporary no parking sign and avoiding a duplex driveway. Mr. Varhola provided photos showing where he parked his vehicle on the evening it was towed.

The City has the burden to demonstrate the officer ordering the tow followed the relevant laws/rules. The Hearings Officer finds that the City has the burden of persuading the Hearings Officer that Mr. Varhola's vehicle was parked in front of a driveway.

The Hearings Officer finds no reason to discredit the testimony of the police officer who ordered the tow, Mr. Varhola or Ms. Sacks. When neither the City nor appellant testimony is more credible than the other then the Hearings Officer will find that the City failed to carry its burden of proof. Because the Hearings Officer finds both the written statement of the police officer and testimony/exhibits offered on behalf of the appellant are equally credible, the Hearings Officer finds the City did not carry its burden of showing that Mr. Varhola's vehicle was in fact parked in front of a driveway. The Hearings Officer finds that the tow of Mr. Varhola's vehicle on October 30, 2009 is not valid.

It is ordered that the owner or other persons who have an interest in the vehicle are not liable for the towing and/or storage charges. It is ordered that the tow and 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: November 13, 2009
GJF: cb



Gregory J. Frank, Hearings Officer

Enclosure

Bureau: Police Bureau
Tow Number: 21547

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 |
|-----------|----------------------------|-------------------|-----------------|
| 1 | Hearing request letter | Varhola, Aaron R. | <u>Received</u> |
| 2 | Tow Receipts | Varhola, Aaron R. | <u>Received</u> |
| 3 | Tow Desk printout | Hearings Office | <u>Received</u> |
| 4 | Hearing notice | Hearings Office | <u>Received</u> |
| 5 | Tow hearing info. sheet | Hearings Office | <u>Received</u> |
| 6 | Investigation report | Police Bureau | <u>Received</u> |
| 7 | Photo (| Varhola, Aaron R. | <u>Received</u> |
| 8 | Photo | Varhola, Aaron R. | <u>Received</u> |
| 9 | Photo | Varhola, Aaron R. | <u>Received</u> |
| 10 | Photo | Varhola, Aaron R. | <u>Received</u> |
| 11 | Photo | Varhola, Aaron R. | <u>Received</u> |
| 12 | Duplicate copies of Exh. 2 | Varhola, Aaron R. | <u>Received</u> |