



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

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**HEARINGS OFFICER'S ORDER**

APPEAL OF JOHN S. SMITH (AKA SAMIR S. HAKIM)

CASE NO. 1090252

DESCRIPTION OF VEHICLE: Nissan Sentra (OR UUX415)

DATE OF HEARING: November 24, 2009

**APPEARANCES:**

Mr. John Smith, Appellant

HEARINGS OFFICER: Mr. Gregory J. Frank

Mr. Smith appeared at the hearing and testified on his own behalf. The Hearings Officer makes this decision based upon the testimony of Mr. Smith and the documents admitted, with no objection from Mr. Smith, into the evidentiary record (Exhibits 1 through and including 14).

Mr. Smith testified that on October 7, 2009, his vehicle was stolen. Mr. Smith stated that he reported his vehicle stolen to the Gresham Police Department on October 7, 2009 (See Exhibit 4). Mr. Smith testified that his vehicle had been stolen another time and in that case he was called by Gresham police and given an opportunity to pick up his vehicle and avoid tow charges. Mr. Smith testified that his vehicle was recovered by Portland police and ordered towed on November 2, 2009. Mr. Smith stated that he received a telephone call, on November 3, 2009, from Portland police informing him the vehicle was found and towed and was given a telephone number to call. Mr. Smith argued that the tow of his vehicle was not valid because he was not given an opportunity to pick up the car himself and avoid the tow charges.

Exhibit 8 is a "Tow Hearing Report" prepared by the City of Portland Office of Transportation Abandoned Auto Inspector who ordered Mr. Smith's vehicle towed. The narrative portion of Exhibit 8 states:

"The vehicle was found where reported at 600 SE 16<sup>th</sup> on Tue. The 27<sup>th</sup> of Oct at 9:30 am. This vehicle had the window down, with leaves inside and appeared inoper to me. I monitored this car at that time. I returned on Nov. the 2<sup>nd</sup> at 7:55 am, the warning was still on car and windows down. I issued a citation at that time. I realize it was stolen, but it appeared abandoned. I received no phone calls regarding this matter."

Exhibit 8 notes that a tow warning sticker was placed on Mr. Smith's vehicle on October 27, 2009 at 9:30 a.m. and the vehicle was ordered towed on November 2, 2009 at 7:55 a.m. Exhibit 9 contains two

pictures showing the driver's side window down. Exhibit 10 contains two photos; one showing the license plate and the second the location of the valve stem of one of the wheels/tires.

The Hearings Officer shall find a tow of a vehicle valid if the Hearings Officer finds that the person who ordered the vehicle towed followed the relevant laws/rules. In this case the relevant laws/rules are found in Portland City Code ("PCC") title 16. PCC 16.20.120 P provides that it is unlawful to park or stop a vehicle if the vehicle is in the public right-of-way and is abandoned. PCC 16.30.210 permits an authorized person to order a vehicle towed, at the owner's expense, if the vehicle is abandoned. PCC 16.90.005 defines abandoned vehicle as one which remains in violation for more than 24 hours and the vehicle appears to be inoperative or disabled. PCC 16.30.225 states that an abandoned vehicle may be towed, no sooner than 72 hours after a tow warning is placed upon the vehicle.

Mr. Smith did not present any evidence that his vehicle, either on October 27, 2009 or November 2, 2009, did not appear inoperative or disabled. The Hearings Officer finds that Mr. Smith's vehicle, on October 27, 2009 and November 2, 2009, did appear inoperative and/or disabled. Mr. Smith did not present any evidence to contradict the Abandoned Auto Inspector statement in Exhibit 8 that a tow warning sticker was placed on the vehicle on October 27, 2009 and that the sticker was still on the vehicle on the date it was towed (November 2, 2009). The Hearings Officer finds that a warning sticker was placed on Mr. Smith's vehicle on October 27, 2009 at 9:30 a.m. and more than 72 hours passed before the vehicle was towed on November 2, 2009. The Hearings Officer finds Mr. Smith's vehicle was in violation (appeared inoperative and/or disabled while on the public right-of-way) for more than 24 hours. The Hearings Officer finds that the Abandoned Auto Inspector who ordered Mr. Smith's vehicle towed followed all of the relevant laws/rules related to towing of an abandoned auto. The Hearings Officer finds the tow is valid.


The Hearings Officer notes that Mr. Smith, while not contesting the underlying facts of an abandoned auto tow, did argue that the tow was invalid as a recovered stolen vehicle tow. PCC 16.30.220 F permits a vehicle to be towed, at the expense of the owner without prior notice to the owner if the police officer reasonably believes that the vehicle is stolen. Portland Policy Document PSF 2.05 states that a police officer "may tow a vehicle without prior notice being mailed to the registered owner" if the police officer "reasonably believes the vehicle is stolen." The police officer who recovers a stolen vehicle is given discretion to contact the owner and wait for the owner to arrive at the scene of recovery. There is no law or rule, in the City of Portland, requiring an owner to be given an opportunity to pick up a recovered stolen vehicle. Had Mr. Smith's vehicle been towed as a recovered stolen vehicle, his argument that he had to be notified and given an opportunity to pick up the vehicle is found, by the Hearings Officer, to have no merit.

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: November 25, 2009

GJF:rs

  
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Gregory J. Frank, Hearings Officer

Bureau: Police  
Tow Number: 21798

## Enclosure

<b>Exhibit #</b>	<b>Description</b>	<b>Submitted by</b>	<b>Disposition</b>
1	Hearing request letter	Smith, John S.	Received
2	11/4/09 Notice of Towed Vehicle	Smith, John S.	Received
3	11/3/09 Notice of Towed Vehicle from City of Gresham	Smith, John S.	Received
4	Gresham Police Department Incident Report	Smith, John S.	Received
5	Tow Desk printout	Hearings Office	Received
6	Hearing Notice	Hearings Office	Received
7	Tow Hearings Process Info. sheet	Hearings Office	Received
8	Tow hearing report	Abandoned Autos	Received
9	Photos	Abandoned Autos	Received
10	Photos	Abandoned Autos	Received
11	Photos	Abandoned Autos	Received
12	Towed Vehicle Record	Police Bureau	Received
13	Incident Report from Gresham Police Department labeled Non-Connect	Police Bureau	Received
14	Control Copy	Police Bureau	Received