



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

LaVonne Griffin-Valade, City Auditor
1900 SW 4th Avenue, Room 3100
Portland, Oregon 97201
Telephone: (503) 823-7307
Fax: (503) 823-4347
TDD: (503) 823-6868
www.portlandonline.com/auditor/hearings

HEARINGS OFFICER'S ORDER

APPEAL OF ROBIN M. GRAY

CASE NO. 1100049

DESCRIPTION OF VEHICLE: Ford Escaper (OR CM01788)

DATE OF HEARING: March 26, 2010

APPEARANCES:

Ms. Robin Gray, Appellant

Ms. Jennie Bricker, Attorney for Ms. Gray

HEARINGS OFFICER: Mr. Gregory J. Frank

Ms. Jennie L. Bricker, attorney, appeared and represented Ms. Robin M. Gray ("Appellant"). Ms. Bricker noted that she was representing Ms. Gray in her individual capacity; Appellant was not a client of Ms. Bricker's firm. Appellant testified, at the hearing, on her own behalf. The Hearings Officer makes this decision based upon the testimony of Appellant, the argument presented by Ms. Bricker and the exhibits admitted into the evidentiary record (Exhibits 1 through and including 15); Exhibit 15 was admitted into the record over the objection of Ms. Bricker and the Hearings Officer notes that the "edit marks" made to Exhibit 15 rendered the document less credible than all other evidence in the record.

Appellant's testimony, summarized by the Hearings Officer, was:

- A "couple" of years ago she spoke to a City of Portland person who told her that parking an RV, so long as is parked greater than 25 feet from an intersection, was legal; and
- Appellant, observed a green tow warning sticker (the "Warning Tag") on the RV (the subject of this tow appeal hearing – hereafter, "The RV") on or about February 12, 2010, and observed the "abandoned vehicle" section marked because The RV registration had expired; and
- Appellant removed the Warning Tag and, in a timely manner, renewed the licensing "tags" and within a short time returned The RV to a parking spot, on the public right-of-way, in close proximity to the location where The RV had been parked on February 12, 2010; and
- Appellant stated that she believed her obtaining updated/current licensing "tags" corrected the "abandoned vehicle" violation as alleged in the Warning Sticker; and
- On or about March 3, 2010, The RV was towed;
- Some time after the tow Appellant indicated she was told by the City of Portland employee who ordered The RV towed that The RV could not be parked "at all" on the public street.

The Hearings Officer summarizes Ms. Bricker's arguments below:

- The Warning Tag issued under Portland City Code ("PCC") 16.30.225 (c) was not effective "notice" to Appellant because the tow occurred almost three weeks after the issuance of the Warning Tag (a more current "Warning Tag" was required as Appellant had moved The RV, licensed The RV and the City had "closed its case) (See Exhibit 1, page 3 for more detailed discussion); and
- Appellant relied upon a statement by a City employee indicating she could legally park The RV on the public right-of-way so long as it was more than 25-feet from an intersection; the City thereby being "equitably estopped from changing its position to Ms. Gray's detriment." (See Exhibit 1, page 3 for more detailed discussion).

Ms. Layman, a City of Portland Abandoned Auto Inspector ("Layman") submitted documents for consideration. (Exhibits 9, 10, 11, 12, 13, 14, and 15). The Hearings Officer admitted these exhibits into the record but, as noted above, did not consider Exhibit 15 in making this decision. The Hearings Officer summarizes Layman's comments found in Exhibit 9 below:

- Layman found The RV at 1400 SE 19th on February 12, 2010, and a Warning Sticker was placed on the vehicle; and
- Layman returned to the location of The RV on February 17, 2010, and "the motor home was gone and I closed the case;"
- Layman received report that The RV "was back on the street, and I reopened the case;"
- Layman returned to the vicinity of 1400 SE 19th and observed The RV "had updated tags;"
- On March 2, 2010, Layman returned to the location of The RV, found it still parked on the public right-of-way, issued a citation and ordered The RV towed.

Exhibit 11 (Exhibit 2 as attached to Appellant's request for a hearing) is a copy of a "Tow Warning" with a check mark in front of "Abandoned Vehicle (16.20.120 P, def. 16.90.005)" for "failure to display current registration plate or current temporary permit" and also a check mark in front of "prohibited truck, trailer, bus RV (16.20.120 H, I)." The Tow Warning (Exhibits 11 and 2) states that "after 72 hours from the issuance of this notice, this vehicle will be towed in accordance with provision of section 16.30.225 of the Portland Municipal Code. The tow, storage and disposal of this vehicle are entirely at the owner's risk and expense." The Tow Warning identifies The RV as having license number CMO1788 and that the Tow Warning was issued on February 12, 2010 at 8:40 a.m.

Exhibit 12 indicates that The RV was towed on March 3, 2010.

The Hearings Officer finds that the Tow Warning placed Appellant on notice that The RV was considered an "abandoned vehicle" because it lacked current license plate "tags" (violation of PCC 16.20.120 P). The Hearings Officer finds that Appellant, in a timely manner, obtained current "tags" and therefore The RV was could no longer be considered an "abandoned vehicle." The Hearings Officer also finds that the Tow Warning placed Appellant on notice that The RV was also considered in violation of PCC 16.20.120 H.I. Ms. Bricker and Appellant expressed some confusion as to what rights a motor home owner had, under PCC 16.20.120 H.I, to park a motor home on the public right-of-way. Ms. Bricker and/or Appellant did not contest that The RV was a motor home. The Hearings Officer notes that motor home is defined in PCC 16.90.290 to include a recreational vehicle.

PCC 16.20.120 H relates to parking a motor home in a residential, church or public park area. PCC 16.20.120 I relates to parking a motor home in an industrial or commercial area. The Hearings Officer, for the purposes of this decision, considered the location where The RV was parked to be a residential area; the restrictions for commercial or industrial areas permit motor home parking for shorter time periods than allowed in residential areas.

PCC 16.20.120 H limits the right to keep a motor home/recreational vehicle on the public right-of-way to 8 hours; generally for the purposes of loading and unloading the vehicle. The Hearings Officer finds there is no evidence in the record to suggest that The RV was being loaded and/or unloaded during the 8 hour time limitation. Rather, the evidence in the record is that The RV has "frequently been parked on Nineteenth Avenue (described in the Tow Vehicle Notice as the 'block of 1400 SE 19th') on the curb next to the Residence and immediately north of the driveway associated with the Residence." (Exhibit 1, page 1) Based upon comments made by Ms. Bricker during the hearing, The RV operates as a "2nd vehicle for the family of four" and is regularly used to transport one or more members of the family. The Hearings Officer finds that on or before February 12, 2010, (date Tow Warning placed on The RV) and on one or more occasions prior to March 2, 2010, (date tow ordered) The RV was in violation of PCC 16.20.120 H.

PCC 16.30.225 C states: "A vehicle may be towed 72 hours after notice of intent to tow has been affixed to or placed on the vehicle if the vehicle is in violation of 16.20.120 H or I or 16.20.170." Appellant and Ms. Bricker agree that a Tow Warning was placed upon The RV on February 12, 2010. Ms. Bricker did not argue that The RV was towed prior to the running of the 72 hour time period. Rather, Ms. Bricker argued that because Appellant moved The RV, on or about February 17, 2010, from its parking spot at 1400 SE 19th, for the purpose of obtaining valid "tags," the City was required to provide another Tow Warning to adequately apprise Appellant of the risk of The RV being towed. Ms. Bricker argued, because the City inspector came out and observed The RV "gone" on February 17, 2010, and closed the City file, the City was required to provide another Tow Warning to adequately apprise Appellant of the risk that The RV could be towed. Finally, Ms. Bricker argued that the passage of "almost three weeks following the February 12, 2010 notice" is such a long time period as to render the February 12, 2010 notice ineffective/unlawful to tow The RV on March 3, 2010 (underlining made by Ms. Bricker in Exhibit 1, page 3).

The Hearings Officer finds that PCC 16.30.225 C sets a minimum period of time that the City must wait, after a Tow Warning is affixed to a vehicle, before that vehicle may be legally towed. The Hearings Officer also finds that PCC 16.30.225 C does not have an "end" time enumerated; a time after which the Tow Warning is no longer effective. The Hearings Officer agrees, in part, with Ms. Bricker's comment that PCC 16.30.225 "does not give the Bureau of Transportation authority to tow the Vehicle for an indefinite and unlimited period following the 72-hour notice period." (Exhibit 1, page 3) The Hearings Officer agrees with Ms. Bricker's comment that the City is not given an unlimited period, after the Tow Warning, to tow a vehicle. The Hearings Officer, however, finds that PCC 16.30.225 C does provide the City an indefinite period, after the Tow Warning, to tow a vehicle.

The Hearings Officer, in this case, must determine whether a time period of approximately 19 days is within the time period that the Tow Warning is so long that the notice ceases to effectively communicate to the vehicle owner the possibility the vehicle may be towed for one of the stated reasons (PCC 16.20.120 P or PCC 16.20.120 H.I). The Hearings Officer finds that affixing a the Tow Warning to The RV on February 12, 2010, for allegedly violating PCC 16.20.120 P and/or PCC 16.20.120 H.I, remains effective on March 3, 2010. The Hearings Officer finds that Appellant was placed on notice, through the February 12, 2010 Tow Warning, that if the vehicle was parked on the public right-of-way for an excessive time The RV was subject to tow.

The Hearings Officer, as stated above, acknowledges that Appellant did correct the PCC 16.20.120 P violation but not the PCC 16.20.120 H violation. The Hearings Officer finds that Appellant was placed on notice, through the Tow Warning on February 12, 2010, that parking The RV on the public right-of-way in violation of PCC 16.20.120 H placed the vehicle at risk of being towed (See Exhibit 2). The Hearings Officer finds that Appellant's moving, temporarily, The RV, does not correct the PCC 16.20.120 H violation if Appellant again leaves The RV on the public right-of-way for excessive time periods.

The Hearings Officer finds, based upon the evidence in the record, that The RV was parked (prior to February 12, 2010 and intermittently thereafter up to March 3, 2010) on the public right-of-way for purposes and time periods

violating PCC 16.20.120 H. The Hearing Officer finds the Tow Warning notice remained effective from February 12, 2010 through and including March 3, 2010 for the PCC 16.20.120 H violation.

The Hearings Officer finds Ms. Bricker's "estoppel" argument is not persuasive. The Hearings Officer finds even if Appellant's recollection of statements made by an unnamed/unknown City employee is correct, the Tow Warning notice set forth the relevant sections of the Portland City Code. The Hearings Officer finds such notice provided Appellant with a time period (not less than 72 hours) to correct the violation(s) and avoid The RV being towed. Even if Appellant could successfully argue that she was entitled to rely upon the oral statement of an unnamed/unknown City employee, such right would end upon her receipt of the Tow Warning. The Tow Warning includes language indicating a tow of the vehicle is possible, after the passage of 72 hours, and gives the Tow Warning recipient a City contact number. Appellant testified, at the hearing, that she did not contact the City between February 12, 2010 (Tow Warning date) and prior to March 3, 2010 (date The RV was towed).

The Hearings Officer finds that Layman followed the relevant laws/rules in ordering The RV towed in this case. The Hearings Officer finds the tow of The RV on March 3, 2010 is valid.

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: March 29, 2010
GJF:rs



Gregory J. Frank, Hearings Officer

Bureau: Abandoned Autos
Tow Number: 4016

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Hearing request	Bricker, Jennie L.	Received
2	Tow Warning	Bricker, Jennie L.	Received
3	Tow Invoice & Towed Vehicle Report	Bricker, Jennie L.	Received
4	Tow Desk printout	Hearings Office	Received
5	Hearing Notice	Hearings Office	Received
6	Tow Hearings Process Info. sheet	Hearings Office	Received
7	Letter - request to reschedule & address correction	Bricker, Jennie L.	Received
8	Rescheduled hearing notice	Hearings Office	Received
9	Tow Hearing Report	Abandoned Autos	Received
10	Case listing	Abandoned Autos	Received
11	Duplicate of Exh. 2 with hand-circled areas	Abandoned Autos	Received
12	Tow Detail	Abandoned Autos	Received
13	Photos	Abandoned Autos	Received
14	Parking Violation	Abandoned Autos	Received
15	Duplicate of Exh. 1 with hand-written notations	Abandoned Autos	Received