



CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF JOHN RYAN

CASE NO. 1120068

DESCRIPTION OF VEHICLE: Toyota Corolla (OR 008FCR)

DATE OF HEARING: April 19, 2012

APPEARANCES:

Mr. John Ryan, Appellant

Officer Willie May, on behalf of City

HEARINGS OFFICER: Ms. Kimberly M. Graves

Mr. Ryan appeared at the hearing and testified on his own behalf. Mr. May 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 Mr. Ryan, Mr. May and the documents admitted into evidence (Exhibits 1 through and including 8).

Summary of Evidence:

Mr. Ryan submitted a Tow Hearing Request Form, Exhibit 1, regarding the tow of his vehicle on April 11, 2012, from NE Cleveland. Mr. Ryan included a type-written letter with his request. (see Exhibit 1a) The letter indicates that on March 23, 2012, Mr. Ryan received a "city sticker" stating that his vehicle appeared abandoned. Mr. Ryan writes that he contacted the city and was told that his vehicle had a flat tire and that the tire needed to be pumped up. Mr. Ryan writes that he pumped up the tire on March 27, 2012, and believed that he was in compliance with the City Code. Mr. Ryan writes that he checked the tire pressure of all 4 tires on March 29, 2012, and they were the same as on March 27, 2012. Mr. Ryan writes that on April 14, 2012, he received a notice from the City of Portland indicating that his vehicle had been towed. Mr. Ryan appeared at the hearing and stated that he pumped up his tire after receiving notice from the city, and that he would have fixed any other violation if he had been made aware of it. Mr. Ryan testified that he was told that the case would be "closed" if the tire was pumped up, so he assumed that he would receive a new notice if there was a new violation.

Mr. May appeared on behalf of the City, and submitted Exhibits 5 through, and including, 8 for the Hearings Officer's consideration. Mr. May testified that a complaint was received about Mr. Ryan's vehicle on March 21,

2012. Mr. May testified that on March 22, 2012, he located the vehicle and found that the right front tire was flat. Mr. May testified that he placed a tow warning sticker on the vehicle indicating that the vehicle appeared abandoned due to the flat tire. Mr. May testified that he did speak with Mr. Ryan, and that on April 3, 2012, when he returned to the area, he did not see the vehicle. Mr. May testified that on April 10, 2012, he received a second complaint about the vehicle. Mr. May testified that he located the vehicle again on April 11, 2012, and found that the right front tire was flat. Mr. May testified that he ordered the vehicle towed on April 11, 2012.

Applicable Law:

The Hearings Officer must find a tow is valid if the Hearings Officer finds that 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. PCC 16.90.005 defines, for the purposes of towing a vehicle in Portland, the term "abandoned." A vehicle is deemed to be abandoned if the vehicle remains in violation for more than 24 hours and if the vehicle does not have a lawfully affixed, unexpired registration plate, or fails to display current registration or the vehicle appears inoperative or disabled. An "abandoned" vehicle may be towed and stored at the owner's expense if the vehicle is parked in the public right-of-way. (PCC 16.30.210 A.10) A vehicle may be towed 72 hours after notice of intent to tow has been affixed to or placed on the vehicle (PCC 16.30.225 B.).

Findings of Fact and Conclusions of Law:

The Hearings Officer finds that on March 22, 2012, Mr. Ryan's vehicle was on the public right-of-way and appeared inoperative due to a flat tire. The Hearings Officer finds that a vehicle remaining on the public right-of-way for 24 hours with a flat tire is a abandoned vehicle within the definition found in the PCC. The Hearings Officer finds that a Notice of Tow was placed on the vehicle on March 22, 2012, by the City of Portland. The Hearings Officer finds that the vehicle could have been lawfully towed 72 hours after placement of the Notice of Tow. The Hearings Officer finds that on March 27, 2012, Mr. Ryan pumped up the tire on his vehicle, thereby removing the vehicle from the abandoned autos definition found within the PCC. The Hearings Officer finds that on April 11, 2012, when Mr. May saw the vehicle's tire was again flat, though no evidence exists to show how long the tire had been flat. The Hearings Officer finds that for the vehicle to meet the definition of an abandoned vehicle, and to be subject to tow as an abandoned vehicle, the vehicle must remain in violation for 24 hours. The Hearings Officer finds that the City has failed to meet its burden to prove that Mr. Ryan's vehicle met the definition of an abandoned vehicle prior to towing. The Hearings Officer finds the tow of Mr. Ryan's vehicle to be invalid.

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 vehicle owner.

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

Dated: April 27, 2012
KMG:rs/jeg



Kimberly M. Graves, Hearings Officer

Enclosure

Bureau: Abandoned Autos
Tow Number: 6073

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	Tow Hearing Request Form	Ryan, John	Received
1a	Written Statement	Ryan, John	Received
2	Tow Desk printout	Hearings Office	Received
3	Hearing Notice	Hearings Office	Received
4	Notice of Rights and Procedures	Hearings Office	Received
5	Case Detail	Abandoned Autos	Received
6	Parking Violation	Abandoned Autos	Received
6a	Photos	Abandoned Autos	Received
7	Large photo	Abandoned Autos	Received
8	Large Photo	Abandoned Autos	Received