



# CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

## Hearings Office

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## HEARINGS OFFICER'S ORDER

APPEAL OF ROGER PATTON

CASE NO. 1120069

DESCRIPTION OF VEHICLE: Mercury Grand Marquis (PA FCJ3989)

DATE OF HEARING: April 24, 2012

APPEARANCES:

Mr. Roger Patton, Sr., Appellant

HEARINGS OFFICER: Mr. Gregory J. Frank

### FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Mr. Roger Patton, Sr. (hereafter "SR") and Mr. Roger Patton, Jr. (hereafter "JR") appeared at the hearing and testified on behalf of the owner (SR) of a Mercury Grand Marquis (PA FCJ3989) (hereafter "The Vehicle"). No person appeared at the hearing to testify on behalf of the City. The Hearings Officer makes this decision based upon the testimony of SR and JR and the documents admitted into the evidentiary record (Exhibits 1 through and including 10).

The Hearings Officer must find a tow valid if the Hearings Officer finds that the person ordering the tow followed the relevant laws/rules. In this case the relevant laws/rules are 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 16.30.210 A.1, PCC 16.30.210 D, and PCC 16.30.220 B. PCC 16.30.210 A.1 authorizes a Parking Enforcement Officer to order a vehicle towed and stored, at the owner's expense, if the vehicle is parked in any public right-of-way and the vehicle is parked in violation of any temporary or permanent parking restriction. PCC 16.30.210 D states that temporary parking restrictions may be enforced by tow 24 hours after placement in any non meter area. PCC 16.30.220 B permits a Parking Enforcement Officer to order a vehicle towed, without prior notice if the vehicle is illegally parked in a posted restricted space/zone.

SR testified that on April 8, 2012, at approximately 9:00 p.m., he parked The Vehicle on the south side of NW Hoyt Street between NW 19<sup>th</sup> and NW 20<sup>th</sup>. SR stated that prior to parking The Vehicle he did

see some "barricade signs;" but, the "barricade signs" were not located in close proximity to where he parked The Vehicle. SR stated that other vehicles were parked in the area where he parked The Vehicle. SR expressed clearly that he did not recall seeing any "barricade sign" located next to the location where he parked The Vehicle on April 8, 2012.

JR testified that the general location where his father parked The Vehicle on April 8, 2012, has a reputation of persons moving temporary no parking signs; "throwing them up the hill." JR pointed out that the Parking Enforcement diagram in the lower left corner of Exhibit 6 was incorrect. JR noted that the locations of NW 19<sup>th</sup> and NW 20<sup>th</sup> on Exhibit 6 were reversed. JR stated that he had no personal knowledge of the date/time the "barricade sign" shown in Exhibit 8 was placed and/or verified. JR stated that the "barricade sign" shown in Exhibit 8 was present at approximately 9:00 a.m. on April 9, 2012.

The Parking Enforcement Officer who ordered The Vehicle towed on April 9, 2012, submitted documents into the record (Exhibits 6, 7 and 8). Exhibit 6, in the comment section, states:

"Responding to complaint from company with barricades reserving street spc. Barricades up and clearly visable (see pictures & working on barricades)..."

Exhibit 6 also notes that the "barricade sign" seen in the photo on Exhibit 8 was placed and verified at 4:44 p.m. on April 6, 2012. Exhibit 8 contains three color photographs. The photo in the upper right hand shows a "barricade sign" adjacent to the front of The Vehicle.

The Hearings Officer finds that there is no dispute by SR or JR that the "barricade sign" seen in Exhibit 8 was placed and verified on April 6, 2012, at 4:44 p.m. The Hearings Officer finds that there is no dispute by SR or JR that the "barricade sign" seen in Exhibit 8 was present at the time The Vehicle was ordered towed. The Hearings Officer finds that SR and JR are disputing the presence of the "barricade sign" adjacent to the Vehicle at approximately 9:00 p.m. on April 8, 2012.

The Hearings Officer finds that SR, the person who parked The Vehicle on April 8, 2012, was generally unfamiliar with parking signage and rules of the City of Portland. The Hearings Officer takes official notice that 9:00 p.m. on April 8, 2012, is after sunset. The Hearings Officer finds that at the time SR parked The Vehicle on April 8, 2012, the area was generally in darkness, excepting for any street lights that may have been present. The Hearings Officer finds JR's testimony that the "barricade sign" could have been "thrown up the hill" is speculative.

The Hearings Officer finds that a preponderance of the evidence in this case indicates that the "barricade sign" shown in the photo on Exhibit 8 was present at 4:44 p.m. on April 6, 2012, and also present at approximately 8:10 a.m. on April 9, 2012. The Hearings Officer finds no persuasive evidence in the record that the "barricade sign" was not present at approximately 9:00 p.m. on April 8, 2012; the time SR parked The Vehicle. The Hearings Officer finds The Vehicle was parked on the City of Portland right-of-way on the evening of April 8, 2012, until the early morning of April 9, 2012. The Hearings Officer finds the temporary no parking sign (shown in Exhibit 8) was at that location for more than 24 hours prior to The Vehicle being ordered towed. The Hearings Officer finds the "barricade sign" to have been located (adjacent to The Vehicle) such that the parking restriction language was clear and conspicuous.

The Hearing Officer finds the Parking Enforcement Officer who ordered The Vehicle towed on April 9, 2012, followed all relevant laws/rules. The Hearings Officer finds the City of Portland ordered tow of The Vehicle on April 9, 2012, is valid.

**ORDER:**

1. The City of Portland ordered tow of The Vehicle on April 9, 2012 is valid.
2. All towing and storage charges against the vehicle shall remain the responsibility of the owner of The Vehicle.
3. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: April 26, 2012  
GJF: jeg

  
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Gregory J. Frank, Hearings Officer

Enclosure

Bureau: Parking Enforcement  
Tow Number: 5914

<b>Exhibit #</b>	<b>Description</b>	<b>Submitted by</b>	<b>Disposition</b>
1	Tow hearing Request Form	Patton, Roger	Received
2	Security Towing & Recovery Invoice	Patton, Roger	Received
3	Tow Desk printout	Hearings Office	Received
4	Notice of Hearing	Hearings Office	Received
5	Notice of Rights and Procedures	Hearings Office	Received
6	Tow Hearing Report	Parking Enforcement	Received
7	Parking Violation	Parking Enforcement	Received
8	Photos	Parking Enforcement	Received
9	Address	Patton, Roger	Received
10	Diagram	Patton, Roger	Received