



CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF John Edward Morgan

CASE NO. 1120065

DESCRIPTION OF VEHICLE: Buick Lesaber (OR SFD998)

DATE OF HEARING: April 26, 2012

APPEARANCES:

John Morgan, Appellant

HEARINGS OFFICER: Ms. Kimberly M. Graves

Mr. Morgan appeared at the hearing and testified on his own behalf. No one 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. Morgan and the documents admitted into evidence (Exhibits 1 through and including 7).

Summary of Evidence:

Mr. Morgan submitted a Tow Hearing Request Form, Exhibit 1, regarding the tow of his vehicle on April 11, 2012, from NW Couch St. Mr. Morgan writes in Exhibit 1:

"i was not in the reserved spot as indacated (sic) i was pass (sic)
the posted no parking sign the space i was in was not posted no parking
(temporary)"

Mr. Morgan appeared at the hearing and testified that he parked his vehicle on Tuesday night (April 10) and that his vehicle was parked all night. Mr. Morgan testified that when he came out to his vehicle on Wednesday morning, he found that his vehicle had been towed. Mr. Morgan testified that he has seen temporary no parking signs in the area before and that the signs are typically posted next to each parking space. Mr. Morgan testified that the sign visible in the photos from parking enforcement is the only sign that was present, and that there were no other signs near his vehicle.

The City submitted Exhibits 5 through, and including, 7 for the Hearings Officer's consideration. Exhibit 5 is a Tow Hearing Report indicating that Mr. Morgan's vehicle was towed on April 11, 2012, from the south side of NW Couch St. between 2nd and 3rd at approximately 7:30 a.m. The narrative portion of the report reads:

"Responding to complaint from company with delineators reserving street
spcs. N/Side of Couch 2-3. Delineators clear and posted (see picture)

Towed per policy - car was not parked there during installation
Verified 4-15-12 10:13 a" (emphasis added by Hearings Officer).

The above portion of the report lists a verification date and time of April 6, 2012, at 12:09 p.m. Exhibit 6 is a copy of the citation issued to Mr. Morgan for violating a temporary no parking restriction. Exhibit 7 contains 4 photos related to the tow of Mr. Morgan's vehicle. The photos show Mr. Morgan's vehicle and a temporary no parking delineator. The bottom right photo shows the vehicle and the delineator together. The delineator appears to be aligned with the rear bumper of Mr. Morgan's vehicle. No other delineators are visible in the photo.

Applicable Law:

The Hearings Officer must find a tow is valid if 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. 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 E states that temporary parking restrictions may be enforced by tow if the space reservation device and/or signs are in place by 12:30 p.m. the prior day in any meter district. 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.

Findings of Fact and Conclusions of Law:

The Hearings Officer finds that on April 10, 2012, Mr. Morgan parked his vehicle on NW Couch Street. The Hearings Officer finds that on April 11, 2012, Mr. Morgan's vehicle was towed for the alleged violation of parking in a temporary no parking zone. The Hearings Officer finds that parking enforcement must properly place and verify temporary no parking signs for the signs to be enforceable by tow. The Hearings Officer finds that conflicting information exists about when the signs on NW Couch Street were placed and verified, and therefore the City has failed to meet its burden to show that the rules in the Portland City Code were followed with respect to the tow of Mr. Morgan's vehicle. The Hearings Officer finds the tow of Mr. Morgan's vehicle to be invalid.

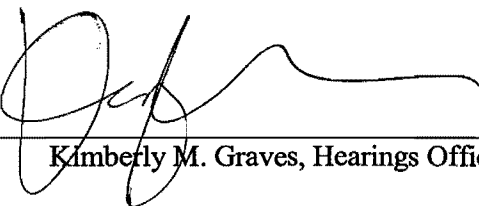
Order:

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: May 8, 2012
KMG:C2/C2

Enclosure



Kimberly M. Graves, Hearings Officer

Bureau: Parking Enforcement
Tow Number: 6030

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	Morgan, John Edward	Received
2	Tow Desk printout	Hearings Office	Received
3	Notice of Hearing	Hearings Office	Received
4	Statement of Rights and Procedures	Hearings Office	Received
5	Tow Hearing Report	Parking Enforcement	Received
6	Parking Violation	Parking Enforcement	Received
7	Photos	Parking Enforcement	Received
8	Tow Invoice	Morgan, John Edward	