



CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF Jerry Lincoln

CASE NO. 1120088

DESCRIPTION OF VEHICLE: Ford Explorer (OR 147EWH)

DATE OF HEARING: May 31, 2012

APPEARANCES:

Mr. Jerry Lincoln, Appellant

HEARINGS OFFICER: Ms. Kimberly M. Graves

Mr. Lincoln 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. Lincoln and the documents admitted into evidence (Exhibits 1 through, and including, 9).

Summary of Evidence:

Mr. Lincoln submitted a type written letter, Exhibit 1, and a Tow Hearing Request Form, Exhibit 3, regarding the tow of his vehicle on May 14, 2012. Mr. Lincoln indicated in his letter that his vehicle was towed from in front of his home. Mr. Lincoln writes:

"I have owned my home since 2007 and since I have spoken w/City officials of the Dept. of Transportation and there is a fire hydrant directly in front of my house. I was told that the Hydrant was inactive and has since parked near the hydrant since I bought my home. On the day of tow my car was near the hydrant not blocking entry to it due to lack of street parking. . . .I was not blocking the hydrant on the day of my town (sic) and feel that towing my vehicle directly in front of my home was very unnecessary."

Mr. Lincoln appeared at the hearing and testified to the same information contained in his typed letter. Mr. Lincoln added that he did numerous renovations on his home and through the process spoke with employees of the City who told him that the hydrant was "dead." Mr. Lincoln testified that the City employee told him that parking in front of the hydrant is permitted because it is inactive.

The City submitted Exhibits 7 through, and including, 9 for the Hearings Officer's consideration. Exhibit 7 is a Tow Hearing Report which indicates that Mr. Lincoln's vehicle was towed on May 14, 2012, for the violation of "fire hydrant." The narrative portion of the report reads:

"I was on routine patrol when I came across this vhl. Parked in front/blocking this fire hydrant. I had just finished an SR in the area & was making my way back to the main through street. As you can see in the photos there are no rings on any of the 3 outlets on the hydrant indicating the hydrant was 'out of service.'"

Exhibit 8 is a copy of the citation issued to Mr. Lincoln for violating PCC 16.20.130C. Exhibit 9 contains 4 photos of Mr. Lincoln's vehicle taken prior to towing. The photos show Mr. Lincoln's vehicle parked next to a fire hydrant. The photos show the hydrant to be just to the rear of Mr. Lincoln's front tire, and close to the driver's side door of the vehicle.

At the hearing, the Hearings Officer noted that the report from Parking Enforcement, Exhibit 7, appears to indicate that the parking enforcement officer may not have towed Mr. Lincoln's vehicle if the hydrant had "rings" indicating that it was inactive. The Hearings Officer determined that it was important to know whether the hydrant could have been marked as inactive in some other fashion, which should have been recognizable to the parking enforcement officer. The Hearings Officer indicated to Mr. Lincoln that she would like to call the City to determine how/if hydrants are marked when they are inactive to aid in deciding whether the actions of parking enforcement were appropriate. Mr. Lincoln indicated that he did not object to the Hearings Officer contacting the City for purposes of determining whether fire hydrants are marked in some fashion when they are deemed inactive.

On June 1, 2012, the Hearings Officer contacted the City Water Bureau regarding the marking of fire hydrants and learned that the individual she needed to speak with was out of the office until June 11, 2012. On June 12, 2012, the Hearings Officer spoke with Mr. Finders regarding the marking of fire hydrants. Mr. Finders indicated that a hydrant may or may not be marked when it is inactive. Mr. Finders indicated that there was not a uniform manner in which inactive hydrants are marked.

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. PCC 16.20.130C provides that it is unlawful to park or stop a vehicle within 10 feet of any fire hydrant, even when not marked by traffic control devices. PCC 16.30.210A9 provides that a vehicle may be towed and held at the expense of the owner from any public right-of-way when the vehicle is parked in violation of any parking regulation. PCC 16.30.220E permits any authorized officer to tow a vehicle, without prior notice, when the vehicle is illegally parked within 10 feet of a fire hydrant.

Findings of Fact and Conclusions of Law:

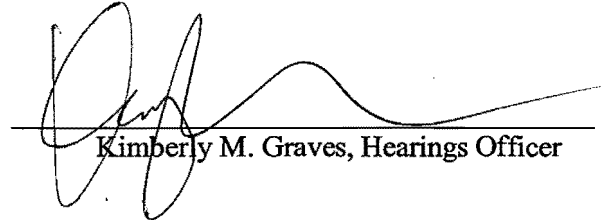
The Hearings Officer finds that Mr. Lincoln's vehicle on May 14, 2012, was parked in a manner which blocked access to a fire hydrant. The Hearings Officer finds that the Portland City Code clearly indicates that parking in front of a fire hydrant is prohibited, and that no exception is stated in the code regarding parking near an "inactive" hydrant. The Hearings Officer finds that inactive hydrants are not routinely and consistently marked, such that parking enforcement could effectively enforce any unwritten exception which may or may not exist. The Hearings Officer finds that the tow of Mr. Lincoln's vehicle is valid.

Order:

Therefore, 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: June 19, 2012
KMG:c2



Kimberly M. Graves, Hearings Officer

Enclosure

Bureau: Parking Enforcement
Tow Number: 7864

Exhibit #	Description	Submitted by	Disposition
1	Hearing request letter	Lincoln, Jerry L.	Received
2	Tow Desk printout	Hearings Office	Received
3	Tow Hearing Request Form	Lincoln, Jerry L.	Received
4	Letter	Lincoln, Jerry L.	Received
5	Notice of Hearing	Hearings Office	Received
6	Statement of Rights and Procedures	Hearings Office	Received
7	Tow Hearing Report	Parking Enforcement	Received
8	Parking Violation	Parking Enforcement	Received
9	Photos	Parking Enforcement	Received