



# CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

## Hearings Office

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## HEARINGS OFFICER'S ORDER

APPEAL OF GEBREHIYWOT MENGISTU

CASE NO. 1120078

DESCRIPTION OF VEHICLE: Ford Explorer (No Plates)

DATE OF HEARING: May 1, 2012

### APPEARANCES:

Mr. Kidus Yared, on behalf of Appellant

HEARINGS OFFICER: Mr. Gregory J. Frank

### FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Mr. Kidus Yared ("Yared") appeared at the hearing and testified on behalf of the vehicle owner Gebrehiywot Mengistu ("Vehicle Owner"). No person appeared at the hearing to testify on behalf of the City. The Hearings Officer makes this decision based upon the testimony of Yared and the documents admitted into the evidentiary record (Exhibits 1 through and including 9).

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 16.20.120 Q, PCC 16.30.210 A.2 and PCC 16.30.220 A and D. PCC 16.20.120 Q states that it is unlawful to park or stop a vehicle in a manner that creates a traffic hazard impeding the safe movement of vehicular or pedestrian traffic. PCC 16.30.210 A.2 states that a vehicle may be towed and held at the expense of the owner or person entitled to possession thereof if the vehicle is in the public right-of-way and the vehicle is parked/stopped unlawfully in a manner that may be hazardous to traffic. PCC 16.30.220 A authorizes a police officer to order a vehicle towed, without prior notice, if the vehicle is impeding or likely to impede the normal flow of vehicular traffic. PCC 16.30.220 D permits a police officer to order a vehicle towed, without prior notice, if the vehicle poses an immediate danger to public safety.

Yared testified that he is a former owner of a Ford Explore with Oregon plates RCQ 538 ("The Vehicle"). Yared stated that he recently transferred title of The Vehicle to the Vehicle Owner. Yared stated that he met the Vehicle Owner, about 1 block from the residence of Yared's parent at the time the Vehicle Owner parked The Vehicle. Yared stated that the Vehicle Owner parked The Vehicle in the proper direction, less than one foot from the curb

and at least five feet from a fire hydrant. Yared stated that a DMV issued "temporary permit" was attached to the rear window of The Vehicle. Yared stated that The Vehicle Owner left license plates to another vehicle (one severely damaged in a traffic accident) in The Vehicle. Yared stated that after he discovered that The Vehicle was not at the location where parked by the Vehicle Owner he checked with a neighbor and was told that the neighbor "reported" The Vehicle to the police because he (the neighbor) was unfamiliar with The Vehicle and suspected that The Vehicle had been stolen.

The City of Portland Police Officer who ordered The Vehicle towed on April 23, 2012, submitted documents into the record (Exhibits 6 and 7). Exhibit 6, in the narrative section (page 2 of 2) states the following:

"Dispatched to NE 8<sup>th</sup>/NE Failing on report of a vehicle parked in front of house for days. No plates on vehicle and VIN covered by paper. Vehicle was approx. 1.5 feet away from curb. Tow ordered and Century towing responded. Popped open locks and found license plates inside. Plate clear but cannot locate owner. No valuables inside. Vehicle towed."

Exhibit 7 indicates The Vehicle was towed as a

"Hazard: parked wrong way on street, over 1 foot away from curb/ near fire hydrant/ 2 feet from..."


Yared testified unequivocally that The Vehicle was parked in the correct direction, parked less than one foot from the curb and was at least five feet from a fire hydrant.

The Hearings Officer finds the oral testimony of Yared to be credible. The Hearings Officer also finds the written statements made by the City Police Officer (Exhibits 6 and 7) to be credible. The Hearings Officer finds that the City has the burden of persuasion in this case. To that end, the Hearings Officer, when the testimony is equally credible by a person representing the Vehicle Owner and a City of Portland Police Officer, must find that the City has failed to carry its burden of persuasion. Therefore, the Hearings Officer finds that there is not substantial evidence in the record to find that the person (City Police Officer) who ordered The Vehicle towed on April 23, 2012, did not follow all relevant laws/rules. The Hearings Officer finds that the City of Portland ordered tow of The Vehicle on April 23, 2012, is not valid.

#### ORDER

1. The Vehicle shall be immediately released, if still held. The Hearings Officer finds that The Owner is not liable for the towing and/or storage charges as long as the vehicle is picked up by the date and time listed on the Notification of Invalid Tow form handed to the appellant at the hearing (Exhibit 9).
2. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: May 2, 2012  
GJF:rs/C2

  
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Gregory J. Frank, Hearings Officer

Enclosure

Bureau: Police  
Tow Number: 6785

<b>Exhibit #</b>	<b>Description</b>	<b>Submitted by</b>	<b>Disposition</b>
1	Tow Hearing Request Form	Mengistu, Gebrehiywot	Received
2	Tow Desk printout	Hearings Office	Received
3	Hearing Notice	Hearings Office	Received
4	Notice of Rights and Procedures	Hearings Office	Received
5	Towed Vehicle Record	Police Records	Received
6	Traffic Violation Tow Report	Police Records	Received
7	Notice of Tow	Police Records	Received
8	Address	Kidus Yared	Received
9	Notification of Invalid Tow	Hearings Office	Received