



CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF MARC MADINABEITIA

CASE NO. 1120081

DESCRIPTION OF VEHICLE: Homemade Trailer (No plates or VIN #)

DATE OF HEARING: May 17, 2012

APPEARANCES:

Mr. Marc Madinabeitia, Appellant

HEARINGS OFFICER: Ms. Kimberly M. Graves

Mr. Madinabeitia 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. Madinabeitia and the documents admitted into evidence (Exhibits 1 through and including 5).

Summary of Evidence:

Mr. Madinabeitia submitted a Tow Hearing Request Form, Exhibit 1, in which he indicates that his homemade trailer was towed on April 26, 2012, from NE Billinger Drive. Mr. Madinabeitia writes that his trailer was cited as abandoned, but that he had been using it all week and on the day that it was towed. Mr. Madinabeitia writes that PCC 16.20.120H permits him to leave his trailer on the roadway for up to 8 hours, and that he was still within the 8 hour window when the trailer was towed. Mr. Madinabeitia appeared at the hearing and testified that his trailer was attached to his truck when it was towed, and that he had been using the trailer all week. Mr. Madinabeitia indicated that he had receipts showing that he had used the trailer in the morning on the day that it was towed. Mr. Madinabeitia indicated that he used the trailer at 10:00 a.m. on the day that it was towed, the trailer was cited at 12:30 p.m. and towed at 7:00 p.m.

The City did not submit any documents to support the validity of the tow.

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 16.90.420 defines "utility trailer" as "a vehicle which is used to carry property, refuse or special equipment, is 16 feet or less in length and is designed to be pulled by a motor vehicle." PCC16.20.120H provides that it is unlawful to park a vehicle, when the vehicle is a utility trailer, in the public right-of-way adjacent to or directly across from residential, public park, church, or school property, except: when loading/unloading property belonging to the occupants of or performing a service on the adjacent residence, for a period not to exceed 8 hours; . . ." PCC 16.30.225 provides that a vehicle may be towed 72 hours after notice of intent to tow has been affixed to or placed on the vehicle if the vehicle is in violation of 16.20.120 H.

Findings of Fact and Conclusions of Law:

The Hearings Officer notes that the burden lies with the City to prove by a preponderance of the evidence that the tow of the vehicle is valid. In the absence of any documents/evidence from the City, the Hearings Officer finds the tow of Mr. Madinabeitia's vehicle is not valid.

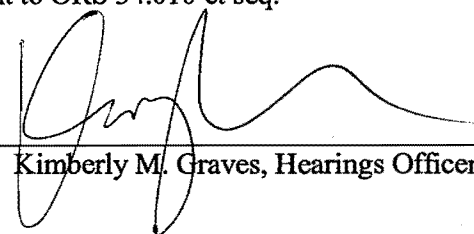
Order:

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.

In order for the appellant to receive reimbursement, a complete and legible copy of the towing and storage bill must be furnished to the Hearings Officer by June 25, 2012.

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

Dated: May 18, 2012
KMG:c1



Kimberly M. Graves, Hearings Officer

Enclosure

Bureau: Abandoned Autos
Tow Number: 6948

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	Madinabeitia, Marc	Received
2	Tow Invoice (amounts aren't entirely legible - was faxed)	Madinabeitia, Marc	Received
3	Tow Desk printout	Hearings Office	Received
4	Hearing Notice	Hearings Office	Received
5	Notice of Rights and Procedures	Hearings Office	Received