

CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF Brittney Shaughnessy

CASE NO. 1120074

DESCRIPTION OF VEHICLE: Honda Accord (WA AAZ5053)

DATE OF HEARING: May 8, 2012

APPEARANCES:

Ms. Brittney Shaughnessy, Appellant

HEARINGS OFFICER: Ms. Kimberly M. Graves

Ms. Shaughnessy appeared at the hearing and testified on her own behalf. Mr. Fred Engh testified at the request of Ms. Shaughnessy. 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 Ms. Shaughnessy and the documents admitted into evidence (Exhibits 1 through and including 9).

Summary of Evidence:

Ms. Shaughnessy submitted a Tow Hearing Request Form, Exhibit 1, regarding the tow of her vehicle on April 9, 2012. Ms. Shaughnessy indicates, in Exhibit 1, that her vehicle was totaled in a collision on April 9, 2012, and that a member of the Washington State Dept. of Transportation (WDOT) offered to move her vehicle from the roadway for her. Ms. Shaughnessy writes that the WDOT worker towed her vehicle to the exit ramp from I-5 to Jantzen Beach and left her vehicle there. Ms. Shaughnessy writes that she left to "call for help" and immediately called the Oregon Department of Transportation (ODOT). Ms. Shaughnessy writes that she was told that she had 24 hours to move her vehicle. Ms. Shaughnessy writes that when she returned to move her vehicle later in the day, her vehicle was gone. She writes that she spoke to the officer who towed her vehicle and he indicated that she could tear up the ticket that she was given. Ms. Shaughnessy appeared and testified in greater detail about the information contained in Exhibit 1. Ms. Shaughnessy stated that the collision occurred around 8:00 a.m. and that she left the scene to use a pay phone to call for a ride. Ms. Shaughnessy testified that prior to leaving the scene she assisted the WDOT worker in moving her vehicle. Ms. Shaughnessy testified that her vehicle was moved to approximately "5 feet" past the exit sign for the Jantzen Beach exit off of I-5. Ms. Shaughnessy testified that she was later told by an ODOT worker that the area where her vehicle was located was a "hazard zone." Ms. Shaughnessy testified that she was picked up at "McDonalds" around 9:15 a.m. and that she did not return to the collision scene. Ms. Shaughnessy testified that she did not contact the police about the collision, and

instead only spoke to ODOT. Ms. Shaughnessy testified that she did not return to the scene until approximately 2:00 p.m., and discovered at that time that her vehicle had been towed. Ms. Shaughnessy testified that she contacted ODOT when she discovered that her vehicle had been towed, and ODOT told her that the vehicle was towed by the Portland Police Bureau.

Mr. Engh testified at the request of Ms. Shaughnessy. Mr. Engh was not present at the time of the collision, nor when the vehicle was moved to the location it was towed from. The Hearings Officer does not consider the testimony of Mr. Engh to be relevant to this matter, and does not consider Mr. Engh's testimony in deciding the matter.

The City submitted Exhibits 6 through, and including, 9 for the Hearings Officer's consideration. Exhibit 6 is a Traffic Crash Report completed by Officer Brennan. The report indicates that Ms. Shaughnessy's vehicle was involved in a two vehicle collision on I-5 on April 9, 2012, at 7:58 a.m. The narrative portion of the report reads "Veh #2 was stopped on the Interstate Bridge (S/B I-5), just north of Jantzen Beach exit 308. After the crash, driver #2 pulled off the freeway w/o telling Driver #1. Driver #1 stayed on scene, and was later pulled off freeway by ODOT Driver. The driver of veh #1 then told ODOT she had to go buy 'some smokes' and left on foot prior to my arrival. Veh #1 driver then never came back (I waited almost an hour), so I towed vehicle #1 as a hazard (ticket issued). Driver 2 called in appx. 15 mins after crash so I took her info over the phone." Exhibit 7 is a Towed Vehicle Record showing that the vehicle was towed as a hazard. The other exhibits from the city relate to the release of Ms. Shaughnessy's vehicle.

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 16.20.120 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.

Findings of Fact and Conclusions of Law:

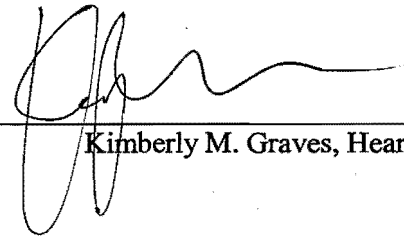
The Hearings Officer finds that on April 9, 2012, Ms. Shaughnessy was involved in a collision on I-5 at approximately 8:00 a.m. The Hearings Officer finds that as a result of the collision, Ms. Shaughnessy's vehicle was left, in operable, in a hazardous location near the roadway. The Hearings Officer finds that the location of the vehicle created a hazard to vehicular traffic and posed a threat to public safety. The Hearings Officer finds that a Portland Police officer, while investigating the collision, located Ms. Shaughnessy's vehicle and remained with the vehicle for an extended period of time waiting for Ms. Shaughnessy to return. The Hearings Officer finds that after Ms. Shaughnessy did not return for her vehicle for greater than 1 hour, the Portland Police officer ordered the vehicle towed as a hazard. The Hearings Officer finds that the order to tow Ms. Shaughnessy's vehicle was reasonable and followed the rules in the PCC. The Hearings Officer finds the tow of Ms. Shaughnessy's vehicle on April 9, 2012, to be 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: May 10, 2012
KMG:C2



Kimberly M. Graves, Hearings Officer

Enclosure

Bureau: PPB
Tow Number: 5915

Exhibit #	Description	Submitted by	Disposition
1	Tow Hearing Request Form	Shaughnessy, Brittney	Received
2	21st Century Towing Receipt	Shaughnessy, Brittney	Received
3	Tow Desk printout	Hearings Office	Received
4	Notice of Hearing	Hearings Office	Received
5	Statement of Rights and Procedures	Hearings Office	Received
6	Oregon Police Traffic Crash Report	Police Records	Received
7	Towed Vehicle Record	Police Records	Received
8	WA Driver License copy	Police Records	Received
9	Vehicle Release	Police Records	Received