

CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF BRIAN TOYE

CASE NO. 1120178

DESCRIPTION OF VEHICLE: KIA SOL (OR 931EQC)

DATE OF HEARING: October 9, 2012

APPEARANCES:

Mr. Brian Toye, Appellant

HEARINGS OFFICER: Ms. Kimberly M. Graves

Mr. Toye 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. Toye and the documents admitted into evidence (Exhibits 1 through and including 8).

Summary of Evidence:

Mr. Toye submitted a Tow Hearing Request Form, Exhibit 1, regarding the tow of his vehicle on September 27, 2012. The report indicates that the "vehicle was not in fact blocking a private driveway." Mr. Toye writes that there was a vehicle parked in the same location both before and after his vehicle was parked there. Mr. Toye writes that he would like to see the photos taken by parking enforcement prior to towing the vehicle. Mr. Toye appeared at the hearing and stated that his wife was driving the vehicle on the night that it was towed. Mr. Toye stated that his wife told him that she was not blocking a driveway. Mr. Toye reviewed the photos submitted by parking enforcement and stated that he believes the photos may show the vehicle parked with the rear blocking the winged portion of the driveway, but the quality of the photos is poor. Mr. Toye stated that if his vehicle was blocking the driveway, then clearly the tow was valid. Mr. Toye indicated that his vehicle is very small, and if it was 3 feet into a driveway, as indicated in the report from parking enforcement, then almost a quarter of the car would be blocking the driveway. Mr. Toye reiterated that his wife told him that she was not blocking a driveway.

The city submitted Exhibits 5 through, and including, 7 regarding the tow of Mr. Toye's vehicle. Exhibit 5 is a Tow Hearing Report. The report indicates that Mr. Toye's vehicle was towed on September 27, 2012 at 7:45 p.m. for the violation of "block driveway." The narrative portion of the report indicates that a request was received from the "homeowner". The report stated "the vehicle was approximately 3 ft into the driveway." Exhibit 6 is a copy of the citation issued to Mr. Toye on September 27, 2012 for blocking a driveway. Exhibit 7 contains 3

photos related to the tow of Mr. Toye's vehicle. The quality of all of the photos is very poor, and large portions of the photos are entirely black. The upper left photo is the only photo which could provide evidence about where the vehicle was parked prior to towing. However, the photo is of such poor quality that it is impossible to tell what is causing the barely visible markings on the ground; grass, concrete, general debris, etc.

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 16.20.130 V., PCC 16.30.220B and PCC 16.90.105. PCC 16.20.130 V states that it is unlawful to park or stop a vehicle in front of any portion of a driveway ingress/egress to the public right-of-way. PCC 16.90.105 defines a "driveway" for the purposes of Title 16. In summary, PCC 16.90.105 defines a "driveway" as an access extending from a public right-of-way onto private or public lands for the purpose of gaining vehicular access to such areas and reasonably designated at the property line so as to be an obvious open for access. For the purposes of enforcement a driveway extends from one curb return to the other and if winged, includes the wings. PCC 16.30.220 A permits a vehicle to be towed without prior notice and stored, at the owner's expense, when the vehicle is impeding or likely to impede the normal flow of vehicular or pedestrian traffic.

Findings of Fact and Conclusions of Law:

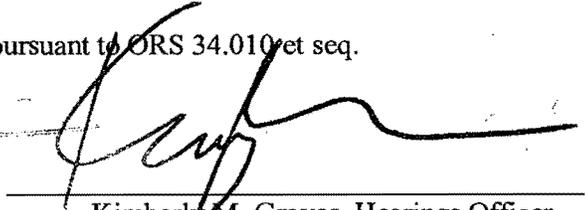
The Hearings Officer finds that the City has the burden to provide sufficient evidence to prove that the tow of Mr. Toye's vehicle is valid. The Hearings Officer finds Mr. Toye credible in his statement that his wife denies parking in front of a driveway. The Hearings Officer finds that the quality of the photos submitted by the city is so poor that relying on the photos alone when making this decision would be unjust. The Hearings Officer finds that the city has failed to provide sufficient evidence to prevail over Mr. Toye's testimony. The Hearings Officer finds the tow of Mr. Toye's vehicle is 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: October 10, 2012
KMG:c2/ml



Kimberly M. Graves, Hearings Officer

Enclosure

Bureau: Parking Enforcement
Tow Number: 14927

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	Toye, Brian	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 #HA11441700	Parking Enforcement	Received
7	Pictures	Parking Enforcement	Received
8	Receipt	Toye, Brian	Received