

CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF Gordon Herzig

CASE NO. 1130013

DESCRIPTION OF VEHICLE: Ford Van (XGN 240)

DATE OF HEARING: February 14, 2013

APPEARANCES:

None

HEARINGS OFFICER: Ms. Kimberly M. Graves

Mr. Herzig did not appear at the hearing. The Hearings Officer was informed by Hearings Office staff, prior to the hearing, that Mr. Herzig indicated in his Tow Hearing Request Form that he would be out of town until February 13, 2013. Title 16 of the Portland City Code requires that tow hearings be scheduled within 14 days of receipt of a completed request form. The Hearings Officer was informed by Hearings Office staff that the hearing in this matter was scheduled outside the 14 day scheduling requirement based on the request by Mr. Herzig that the hearing be scheduled after he returned on February 13, 2013. A Notice of Hearing was mailed to Mr. Herzig on January 28, 2013 informing him of the February 14, 2013 hearing date. The Notice was not returned to the Hearings Office, and Mr. Herzig did not contact the Hearings Office prior to the hearing to ask that the hearing be rescheduled. 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 documents admitted into evidence (Exhibits 1 through and including 9).

Summary of Evidence:

Mr. Herzig submitted a Tow Hearing Request Form, Exhibit 1, regarding the tow of his vehicle on January 15, 2013 from NE 17th. Mr. Herzig writes in Exhibit 1, "The truck is regestered (sic) currently but for some reason that I don't know the tags are (I assume) not on the plates."

The city submitted Exhibit 5 through, and including, 9 for the Hearings Officer's consideration. Exhibit 5 is a Tow Hearing Report from the Abandoned Auto Section of the Office of Transportation. The report indicates that a "public report" was received on January 2, 2013 regarding Mr. Herzig's vehicle. The report indicates that on January 8, 2013 at 8:52 a.m. the vehicle was located on NE 17th. The report further indicates that on January 8, 2013 the vehicle had expired registration stickers and that a 72 hour tow warning notice was affixed to the

vehicle. The report indicates that a member of the abandoned auto section returned on January 15, 2013 and found the vehicle still in violation for having expired registration stickers. The vehicle was ordered towed on January 15, 2013. Exhibit 6 lists, in a different format, the information contained in Exhibit 5. Exhibit 7 contains 4 photos related to the tow of the vehicle. The photos show both the rear and the front license plates with registration stickers which expired in September 2012. The other photos show the tow warning notice and the rear of the vehicle (lacking a trip permit). Exhibit 8 is a copy of the citation issued when the vehicle was ordered towed. Exhibit 9 is an enlarged copy of a photo from Exhibit 7 which shows the expired registration sticker.

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 16.90.005 defines, for the purposes of towing a vehicle in Portland, the term "abandoned." A vehicle is deemed to be abandoned if the vehicle remains in violation for more than 24 hours and if the vehicle does not have a lawfully affixed, unexpired registration plate, or fails to display current registration or the vehicle appears inoperative or disabled. An "abandoned" vehicle may be towed and stored at the owner's expense if the vehicle is parked in the public right-of-way. (PCC 16.30.210 A.10) A vehicle may be towed 72 hours after notice of intent to tow has been affixed to or placed on the vehicle (PCC 16.30.225 B.).

Findings of Fact and Conclusions of Law:

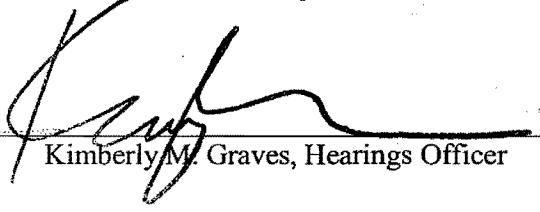
The Hearings Officer finds that on January 8, 2013 Mr. Herzig's vehicle was parked on the public right-of-way and was displaying registration tags which expired in September 2012. The Hearings Officer finds that a tow warning notice was attached to the vehicle on January 8, 2013. The Hearings Officer finds that on January 15, 2013 Mr. Herzig's vehicle remained on the public right-of-way and continued to display expired registration tags. The Hearings Officer finds that Mr. Herzig's vehicle fit the definition of an abandoned vehicle within the PCC. The Hearings Officer finds that greater than 72 hours passed between when the tow warning notice was affixed to the vehicle and when the vehicle was towed. The Hearings Officer finds that the person who ordered the tow of Mr. Herzig's vehicle followed all of the relevant rules in the PCC when they made that order. The Hearing Officer finds the tow of Mr. Herzig's vehicle is valid.

Order:

Therefore, it is ordered that all towing and storage charges against the vehicle, and an administrative fee, if applicable, shall remain the responsibility of the appellant.

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

Dated: February 20, 2013
KMG:c2/ml



Kimberly M. Graves, Hearings Officer

Enclosure

Bureau: Abandoned Autos
Tow Number: 838

Exhibit #	Description	Submitted by	Disposition
1	Tow Hearing Request Form	Herzig, Gordon	Received
2	Tow Desk printout	Hearings Office	Received
3	Notice of Hearing	Herzig, Gordon	Received
4	Statement of Rights and Procedures	Hearings Office	Received
5	Tow Hearing Report	Abandoned Autos	Received
6	Tow Detail	Abandoned Autos	Received
7	Photos	Abandoned Autos	Received
8	Parking Violation	Abandoned Autos	Received
9	Photo	Abandoned Autos	Received