



CITY OF  
**PORTLAND, OREGON**  
HEARINGS OFFICE

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**HEARINGS OFFICER'S ORDER**

APPEAL OF TORREY NELSON

CASE NO. 1080230

DESCRIPTION OF VEHICLE: Chevrolet Silverado (OR CMT591)

DATE OF HEARING: August 14, 2008

APPEARANCES:

Torrey Nelson, Appellant

HEARINGS OFFICER: Mr. Gregory J. Frank

The Hearings Officer, on substantial evidence and based upon the record as a whole, finds as follows:

Mr. Nelson appeared and testified on his own behalf. Mr. Nelson expressed concern about the Hearings Officer admission, into the evidentiary record, of Exhibits 6, 7, 8, and 9, because he felt they did not represent truthfully the facts of the case. The Hearings Officer found that Exhibits 6, 7, 8 and 9 are relevant to the issues presented in this case, and therefore admitted Exhibits 1 through and including 9 into the evidentiary record. The Hearings Officer informed Mr. Nelson that he was welcome to present any testimony and/or evidence into the record to challenge information in Exhibits 6, 7, 8 and 9. In the end, the Hearings Officer makes this decision based upon the evidence in the record and the credibility of Mr. Nelson, and the officer submitting Exhibits 6, 7, 8 and 9.

Mr. Nelson testified that he lives in a condominium complex and has two vehicles. One vehicle, according to Mr. Nelson, is parked on the condominium property and the other on the public right-of-way. Mr. Nelson stated that during the last two months he has been out of town quite a lot. Mr. Nelson acknowledged that the pickup truck that is subject to this tow hearing did have a "flat tire", and that anytime he wanted to drive it he simply pumped up the tire. Mr. Nelson testified that on Friday, July 25, 2008 he checked his truck and there was no warning sticker on the truck at that time. Mr. Nelson stated that he is familiar with the green warning stickers used by the Abandoned Auto Section to warn vehicles. Mr. Nelson stated that he left town on Friday, July 25, 2008 and returned on Monday, July 28, 2008 and again he noticed no green warning sticker on the pickup truck. He stated that "if the notice was there he did not see it." Mr. Nelson stated that he believed the tags on the pickup truck were valid and current. Mr. Nelson stated that pictures in Exhibit 9 showing a torn green warning sticker actually showed an "old" sticker, and not one which would be associated with this tow and case.

Exhibit 6 is a tow hearing report prepared by the City of Portland official who ordered Mr. Nelson's pickup truck towed. The narrative section ("inspector detail") states the following:

"The vehicle was found where reported in the 7500 bl N Catlin on Monday July 21<sup>st</sup> 2008 at 8:50 am. The vehicle had a Left front tire that was flat. I warned the vehicle at that time with a warning tag that was

stuck on the drivers side window. ON Monday July 28<sup>th</sup> I returned to check the status of the vehicle, the Left front tire was still flat. I cited the vehicle for tow at that time. The vehicle displayed tags with an expiration date of 03 09, DMV shows the expiration date of 03 08. The vehicle displayed incorrect tags."

Later, in Exhibit 6, the City official noted that the vehicle was towed as a "Abandoned Vehicle (16.20.120P, def. 16.90.005)" for the reasons of "No Current registration plate displayed" and also "Appears inoperative or disabled." Exhibit 7, case notes of the City official ordering the tow, indicate that Mr. Nelson's vehicle was warned on July 21, 2008 at 8:50 a.m. and was towed on July 28, 2008. Exhibit 8 is a copy of an email from Sergeants Towing stating, in part that "while there was not a Tow Warning on the window of this vehicle, there WAS one laying on the seat, which had, obviously, been removed from the window." Attached to the email were photos. The photos show a pickup truck (Oregon license CMT 351) with a flat tire and a torn green warning sticker on the passenger seat.

Portland City Code grants the right to the City to have a vehicle towed if it is parked in the public right-of-way, and if the vehicle is abandoned (Portland City Code 16.20.120 P.). An abandoned vehicle may be towed 72 hours after notice of intent to tow has been affixed to or placed on the vehicle (Portland City Code 16.30.225 B.) Abandoned vehicle is defined to be a vehicle that remains in violation for more than 24 hours, and one or more of the following conditions exist: A. the vehicle does not have a lawfully affixed, unexpired registration plate or fails to display current registration, B. the vehicle appears inoperative or disabled, or C. the vehicle appears to be wrecked, partially dismantled or junked (Portland City Code 16.90.005).

Undisputed evidence is in the record of this case that Mr. Nelson's pickup truck that was towed by the City did in fact have a front left tire that was flat. Mr. Nelson, in his testimony, did not contest the City inspector's observation of July 21, 2008 or July 28, 2008 that the front left tire was flat. Therefore, the Hearings Officer finds, based solely on uncontested evidence, that the vehicle appeared inoperative or disabled on July 21, 2008 and July 28, 2008; a period exceeding 24 hours. The Hearings Officer finds the violation existed for more than 24 hours.

The City Code requires that a warning notice be "affixed" or "placed" on the vehicle and that warning be at least 72 hours prior to the vehicle being towed. The City inspector report indicates that Inspector Peterson affixed or placed a warning sticker on Mr. Nelson's vehicle on July 21, 2008. Mr. Nelson offered no testimony that he observed his pickup on July 21, 2008; he stated that he did look at the vehicle on July 25, 2008. The Hearings Officer finds no evidence in the record that Inspector Peterson's report is not credible. The Hearings Officer finds that part of Inspector Peterson's ordinary duties of employment is to place warning stickers on vehicles, and that Inspector Peterson's notes reflect that a notice was placed on Mr. Nelson's vehicle. The Hearings Officer finds that Inspector Peterson's report is credible and that the notice of warning was affixed or placed on Mr. Nelson's vehicle on July 21, 2008 at approximately 8:50 a.m.

The Hearings Officer is not necessarily disputing Mr. Nelson's testimony regarding the warning sticker. Mr. Nelson's testimony was that "if the notice was there he did not see it." Mr. Nelson did not say unequivocally that the sticker was not placed on his vehicle, only that he did not see it.

The Hearings Officer finds that the warning sticker was placed on Mr. Nelson's vehicle on July 21, 2008 and the vehicle was towed on July 28, 2008. The Hearings Officer finds that more than 72 hours elapsed between the date/time the warning sticker was placed and the vehicle towed.

The Hearings Officer finds that the City official who ordered the tow followed the relevant laws/rules (as noted above) and therefore the tow is valid.

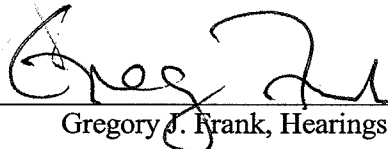
Hearings Officer Note: Mr. Nelson, during his testimony stated that he often parks one of his vehicles on the public right-of-way; occasionally during times when he is out of town. Portland City Code 16.20.170

limits the parking of vehicles on the public right-of-way to not more than 24 hours without permission of the City Engineer. Failure to operate and move a vehicle off of the block face within a 24-hour period constitutes prima facie evidence of violation of 16.20.170 and subjects the vehicle to being towed.

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: August 15, 2008  
GJF: cb

  
Gregory J. Frank, Hearings Officer

Bureau: Abandoned Autos  
Tow Number: Unknown

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Letter requesting hearing	Nelson, Torrey	Received
2	Hearing denial letter	Hearings Office	Received
3	Hearing request form	Nelson, Torrey	Received
4	Hearing notice	Hearings Office	Received
5	Tow hearing info. sheet	Hearings Office	Received
6	Tow hearing report	Abandoned Autos	Received
7	Detail Case report	Abandoned Autos	Received
8	Email regarding photos & info. from VanHoosen to Johnson	Abandoned Autos	Received
9	8 1/2 x 11 Photos (4)	Abandoned Autos	Received

