



CITY OF
PORTLAND, OREGON
HEARINGS OFFICE

1900 S.W. 4th Avenue, Room 3100
Portland, Oregon 97201
Telephone: (503) 823-7307
FAX: (503) 823-4347
TDD (503) 823-6868

HEARINGS OFFICER'S ORDER

APPEAL OF BRIAN A. HAGEDORN

CASE NO. 1080339

DESCRIPTION OF VEHICLE: Toyota 4 Runner (OR SSY455)

DATE OF HEARING: November 28, 2008

APPEARANCES:

Brian A. Hagedorn, Appellant

HEARINGS OFFICER: Mr. Gregory J. Frank

Mr. Hagedorn appeared and testified on his own behalf. Mr. Hagedorn expressed concern about the admission of Exhibit 8. Mr. Hagedorn did acknowledge that Exhibit 8 was relevant to his case, but he stated that the conclusions drawn by the police officer were unsupported by objective observations. The Hearings Officer admitted Exhibits 1 through and including 13. The Hearings Officer makes this decision based upon the testimony of Mr. Hagedorn and the exhibits admitted into the evidentiary record.

Exhibit 8, a Traffic Violation Tow Report, indicated that Mr. Hagedorn's vehicle was towed for reckless driving. The back page of Exhibit 8 states that the police officer attempted to stop Mr. Hagedorn's vehicle, that Mr. Hagedorn "bailed from the vehicle on reckless driving." The Notice of Impoundment (Exhibit 9) indicates that the police officer ordered the vehicle towed for violation of ORS 811.140 (Reckless Driving).

The Hearings Officer is required to find a tow valid if the officer who ordered the tow followed the relevant laws/rules. In this case, the relevant law is Portland City Code 16.30.220 K.7. This section of the Portland City Code permits an officer to tow a vehicle, without prior notice, if the police officer had probable cause to believe that the vehicle's operator violated ORS 811.140 (Reckless Driving). A person commits reckless driving if the person drives recklessly in a manner that endangers the safety of persons or property. ORS 161.085 defines the term recklessly, in the context of ORS 811.140, as when a person is aware and consciously disregards a substantial and unjustifiable risk...and such action constitutes a gross deviation from the standard that a reasonable person would observe in the situation.

Mr. Hagedorn denied, prior to his vehicle being towed, that he had driven recklessly.

There is no evidence that Mr. Hagedorn drove at excessive speeds, drove erratically, disregarded stop signs or any other behavior suggesting that Mr. Hagedorn drove recklessly. As such, the Hearings Officer must find that there is not evidence in the record to support a finding that Mr. Hagedorn drove recklessly on the date his vehicle was ordered towed. Had the officer testified at the hearing or provided a narrative report describing his/her observations leading up to tow of Mr. Hagedorn's vehicle, the decision of the Hearings Officer may have been different. However, considering the evidence in this case, the Hearings Officer must find the tow of Mr. Hagedorn's vehicle not valid.

It is ordered that the owner of the vehicle is not liable for the towing and/or storage charges. Mr. Hagedorn provided a legible copy of the receipt whereby his vehicle was released.

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

Dated: November 28, 2008

GJF: cb



Gregory J. Frank, Hearings Officer

Bureau: Police Bureau

Tow Number: 29713

Enclosure

If a refund has been authorized, it will be sent from the City's Accounts Payable Office. Please allow at least 4 weeks.

| Exhibit # | Description | Submitted by | Disposition |
|-----------|--|--------------------|-------------|
| 1 | Hearing request letter | Hagedorn, Brian A. | Received |
| 2 | Citation (illegible/looks almost blank) | Hagedorn, Brian A. | Received |
| 3 | Tow Desk printout | Hearings Office | Received |
| 4 | Hearing notice | Hearings Office | Received |
| 5 | Tow hearing info. sheet | Hearings Office | Received |
| 6 | Towed Vehicle Record | Police Records | Received |
| 7 | LEDS printout | Police Records | Received |
| 8 | Traffic Violation Tow Report | Police Records | Received |
| 9 | Notice of Impoundment Towing | Police Records | Received |
| 10 | Auto Records Formal Hold - OK to Release with Driver's License | Police Records | Received |
| 11 | Vehicle Release | Police Records | Received |
| 12 | Copy of Find Law printout | Hagedorn, Brian A. | Received |
| 13 | Receipt | Hagedorn, Brian A. | Received |