



CITY OF

PORTLAND, OREGON

OFFICE OF THE CITY AUDITOR
Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF CHRISTOPHER ROBINSON

CASE NO. 1090225

DESCRIPTION OF VEHICLE: Mitsubishi Eclipse (OR 615CPZ)

DATE OF HEARING: October 15, 2009

APPEARANCES:

Mr. Christopher Robinson, Appellant

HEARINGS OFFICER: Mr. Ian Simpson

The Hearings Officer makes this decision based upon Mr. Robinson's testimony and the exhibits admitted into the evidentiary record (Exhibits 1 through and including 7). During the October 15, 2009 hearing, the Hearings Officer found the tow to be valid. This decision was based on the Hearings Officer finding that the City Code authorizes an officer to tow a vehicle if it is blocking or interfering with traffic, including in some circumstances if the vehicle is parked on private property. After the hearing closed, the Hearings Officer determined that an error may have been in the decision. The Hearings Officer proceeded to reexamine the case.

The officer's report (Exhibit 6) indicated that the officer contacted Mr. Robinson regarding his vehicle blocking the driveway egress to 8832 N. Syracuse. The appellant told the officer that he did not have the keys to the vehicle and had no money to tow the vehicle. The officer cited the vehicle for blocking the driveway and as a hazard, and had it towed.

The appellant testified in the hearing and submitted a written statement (Exhibit 1). The appellant stated that he believed the tow was invalid because he was the victim in the situation, and because his vehicle was on private property. He stated that before the tow occurred, a person had illegally entered his apartment and stole his car keys. The person tried to steal the appellant's vehicle, and drove it out of its parking space in the apartment building parking lot. The person left the vehicle parked blocking other vehicles in the parking lot, which was on private property. The person still had the keys, and the appellant stated that he could not move the vehicle without the keys. The police arrived and an officer told the appellant that the only way the officer could help him was by having the vehicle towed. The appellant stated that the officer considered the vehicle to be a hazard because of how it was left. The appellant stated that the vehicle could not be pushed back into its original parking place without a tow truck, and he did not have the money to pay for a tow or have new keys made.

The first basis the officer cited for towing the vehicle was that it was blocking a driveway. The Hearings Officer finds that the relevant code sections are below.

16.20.001 Purpose.

(Amended by Ordinance Nos. 165594 and 179141, effective March 23, 2005.) This chapter describes the regulation of parking on City of Portland owned or operated property, including but not limited to surface parking lots, parking structures and designated parking areas; and public right-of-ways, including but not limited to streets, designated parking areas, planting strips, and sidewalks.

16.20.130 Prohibited in Specified Places.

(Amended by Ord. No. 165594, July 8, 1992.) Except when specifically directed by authority of this Title or when necessary to avoid conflict with other traffic, it is unlawful to park or stop a vehicle in any of the following places:

V. In front of any portion of a driveway ingress/egress to the public right-of-way.

The Hearings Officer finds that the subject vehicle was parked on private property, blocking other vehicles from using the parking lot driveway. The Hearings officer finds that PPC 16.20.130.V prohibits parking a vehicle in front of a driveway ingress/egress to the public right-of-way. However, the Hearings Officer finds that PCC 16.20.001 states that the regulations of Chapter 16.20 apply to parking on City of Portland owned or operated property and public right-of-ways. Since the subject vehicle was parked in a private parking lot, the Hearings Officer finds that the driveway regulations of PCC 16.20.130.V are not a valid legal basis for the tow.

The second basis the officer cited for towing the vehicle was that it was a hazard. The Hearings Officer finds that the term "hazard", in this context, may reasonably be interpreted as that the vehicle is a danger, and especially an imminent danger. The Hearings Officer finds that the relevant code sections are below.

16.30.220 Towing Without Prior Notice.

(Amended by Ordinance Nos. 165980, 170912, 176352, and 176442, effective May 1, 2002.) Any authorized officer may, without prior notice, order a vehicle towed, when:

D. The vehicle poses an immediate danger to the public safety;

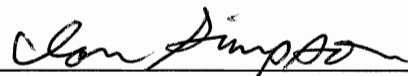
The Hearings Officer finds that if a vehicle was an immediate danger to the public safety (as per subsection D above) it would certainly be considered a hazard. The Hearings Officer finds that impeding vehicle movement, such as blocking vehicles from using a driveway, is not in itself adequate evidence to find that a vehicle is an immediate danger to the public safety, and so PCC 16.30.220.D. is not a valid legal basis for the tow.

Given these circumstances, the Hearings Officer finds that this was an invalid tow. 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.

If the subject vehicle has been released, in order for the appellant to receive reimbursement, a complete and legible copy of the towing and storage bill must be furnished to the Hearings Officer by November 28, 2009.

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

Dated: October 26, 2009
IS:cb/rs


Ian Simpson, Hearings Officer

Bureau: Police
Tow Number: 19695

Enclosure

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
<u>1</u>	Letter	Robinson, Christopher	<u>Received</u>
<u>2</u>	Tow desk printout	Hearings Office	<u>Received</u>
<u>3</u>	Hearing notice	Hearings Office	<u>Received</u>
<u>4</u>	Tow hearing info. sheet	Hearings Office	<u>Received</u>
<u>5</u>	Towed vehicle record	Police Bureau	<u>Received</u>
<u>6</u>	Investigation Report	Police Bureau	<u>Received</u>
<u>7</u>	Parking Violation	Police Bureau	<u>Received</u>