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**PORTLAND, OREGON**

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**OFFICE OF THE CITY AUDITOR**  
**Hearings Office**

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**HEARINGS OFFICER'S ORDER**

APPEAL OF DONALD GLEN WELTY

CASE NO. 1090232

DESCRIPTION OF VEHICLE: Buick Park Avenue (ID 1AXP187)

DATE OF HEARING: October 26, 2009

APPEARANCES:

Mr. Donald Glen Welty, Appellant

HEARINGS OFFICER: Mr. Gregory J. Frank

Prior to holding the hearing, the Hearings Officer had questions regarding the ownership of the towed vehicle. The police report (Exhibit 6) appeared, to the Hearings Officer, to show a Ms. Charboneau as the owner of the towed vehicle. Mr. Welty, the person requesting the hearing, was requested to provide evidence that he was the owner of the towed vehicle. Mr. Welty provided Exhibits 9 and 10. Upon review of Exhibits 9 and 10, the Hearings Officer determined that Mr. Welty had provided sufficient evidence that he is the owner of the towed vehicle. The Hearings Officer relied most heavily upon Exhibit 10, a letter from the City to Mr. Welty stating that "our records indicate that you may have an interest in the following vehicle towed..." A hearing on Mr. Welty's appeal of the validity of the tow of his vehicle was held and Exhibits 1 through and including 10 were admitted.

Exhibit 6, the written police report prepared by the police officer who ordered Mr. Welty's vehicle towed, states that Mr. Welty's vehicle was towed because it was suspected stolen. The police officer, in Exhibit 6, states that he observed Mr. Welty's vehicle with a broken rear window and the ignition had been tampered with. Mr. Welty, in his letter requesting a hearing (Exhibit 2) agrees with the police report that his vehicle did have a broken rear window and that the ignition had been modified (tampered with). However, Mr. Welty, in Exhibit 2, stated that his vehicle had not been reported stolen.

The Hearings Officer finds that the essential facts in this case are not in dispute: (1) Mr. Welty's vehicle had not been reported stolen and that (2) the condition of a rear window and the ignition do in fact give an impression that Mr. Welty's vehicle had been stolen.

Portland City Code section 16.20.220 F. permits a police officer to tow, without prior notice to the owner of the vehicle, if the police officer "reasonably believes that the vehicle is stolen." Portland Policy Document PSF 2.05, an administrative rule adopted pursuant to City of Portland Rule-Making

Authority, states that a vehicle may be ordered towed, without prior notice to the registered owner, if the police officer reasonably believes the vehicle is stolen. PSF-2.05 (640.60) goes on to say "The criteria constituting a reasonable belief shall consist of tampered or missing vehicle identification number (VIN) only."

The Hearings Officer finds that the section of PSF – 2.05 (630.60) dealing with a police officer's reasonable belief that a vehicle is stolen is consistent with an explanation of Portland City Code section 16.20.220 F. The Hearings Officer finds that the criteria that may be considered by a police officer when determining if a vehicle is stolen is limited to the tampering of or a missing VIN. In this case, there is no evidence in the record to suggest that the VIN was missing or had been tampered with. Therefore, there is no evidence in the record to support a finding that the police officer had a reasonable belief the vehicle was stolen. In this case, the undisputed facts that the rear window was broken and the ignition had been tampered with could not (without evidence that the VIN was missing or tampered with) be considered by the police officer as forming the reasonable belief that Mr. Welty's vehicle had been stolen.

The Hearings Officer finds, based upon the evidence in the record, that the police officer did not have a reasonable belief that Mr. Welty's vehicle had been stolen and therefore a tow of Mr. Welty's vehicle could not be ordered, without prior notice to Mr. Welty. The Hearings Officer finds the tow of Mr. Welty's vehicle on October 14, 2009 is not valid.

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.

In order for a refund to be processed, a complete, legible, copy of the tow invoice must be provided to the Hearings Office by November 19, 2009.

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

Dated: October 26, 2009  
GJF:cb/rs

  
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Gregory J. Frank, Hearings Officer

Bureau: Police  
Tow Number: 20387

Enclosure

If a refund has been authorized, it will be sent from the City's Accounts Payable Office. Please allow at least 3 weeks.

<b>Exhibit #</b>	<b>Description</b>	<b>Submitted by</b>	<b>Disposition</b>
1	Tow hearing request form	Welty, Donald Glen	Received
2	Tow desk printout	Hearings Office	Received
3	Hearing notice	Hearings Office	Received
4	Tow hearing info. sheet	Hearings Office	Received
5	Tow desk printout	Hearings Office	Received
6	Investigation report w/narrative	Police Bureau	Received
7	Towed vehicle record	Police Bureau	Received
8	Proof of Ownership letter	Hearings Office	Received
9	Application for Certificate of Title (Idaho)	Welty, Donald Glen	Received
10	Notice of Towed Vehicle	Welty, Donald Glen	Received
11	Notification of Invalid Tow form	Hearings Office	