



CITY OF
PORTLAND, OREGON
OFFICE OF THE CITY AUDITOR
Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF AMIR HOSSEIN NIKOUPOUR

CASE NO. 1090266

DESCRIPTION OF VEHICLE: Honda Civic (OR 575DNA)

DATE OF HEARING: December 17, 2009

APPEARANCES:

Amir Hossein Nikoupour, appellant

HEARINGS OFFICER: Mr. Gregory J. Frank

Mr. Nikoupour appeared at the hearing and testified on his own behalf. Mr. Nikoupour disagreed with the accuracy of the Abandoned Auto Inspector's comments in Exhibit 6. The Hearings Officer admitted Exhibits 1 through and including 9, but informed Mr. Nikoupour that the Hearings Officer would consider Exhibit 6 in the context of his testimony. The Hearings Officer makes this decision based upon the testimony of Mr. Nikoupour and the documents admitted into the evidentiary record (Exhibit 1-9).

Mr. Nikoupour testified that he disagreed that the vehicle subject to the tow hearing (Honda Civic Oregon license 575DNA, hereafter referred to as the "Vehicle") was abandoned. Mr. Nikoupour stated that the Vehicle does have "cosmetic" issues, but those issues do not make the Vehicle undriveable. Mr. Nikoupour stated that the driver's side window of the Vehicle does not roll all of the way closed and he did cover that window with plastic to keep the rain out. Mr. Nikoupour stated that when he drives the Vehicle he removes the plastic. Mr. Nikoupour stated that there is a "bumper missing", has a "few dents", and the "dash is broken because the stereo was stolen."

The Abandoned Auto Inspector (the "Inspector") submitted a written report (Exhibit 6), copy of a citation issued related to the tow (Exhibit 8), and photos of the Vehicle (Exhibit 7). The Inspector's written statement (Exhibit 6) included the following:

"The vehicle was found where reported at 4100 BL NE Multnomah on November 23rd 2009 at 11:06 am. The vehicle had some damage to the front end. The drivers side window was covered with plastic you could not see out of, which lead me to believe the vehicle was not being driven. I warned the vehicle for appears inoperative or disabled, and appears partially dismantled. I returned on November 30th to recheck the status of the vehicle. The tow warning notice was still on the window and the vehicle had not been moved. At that time I cited the vehicle for tow."

The Inspector's written report indicated that the vehicle was ordered towed on November 30, 2009. The photos (Exhibit 7) show the Vehicle with a green warning sticker (left rear window) and plastic over the front left window. One photo (Exhibit 7) shows damage to the front of the Vehicle.

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 to be inoperative or disabled or wrecked, partially dismantled or junked. 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 16.30.120 A.10). A vehicle may be towed 72 hours after notice of intent to tow has been affixed to or placed on the vehicle.

The Hearings Officer finds that Mr. Nikoupour's statement that the Vehicle is actually driveable is more than likely true. The Hearings Officer also finds that Mr. Nikoupour's statements regarding the "cosmetic" condition of the Vehicle are also true; driver's window covered with plastic, bumper missing, dents, and dashboard "broken." The Hearings Officer finds that Mr. Nikoupour's description of the Vehicle is generally consistent with the comments made by the Inspector in Exhibit 6 and the photos in Exhibit 7. The Hearings Officer finds that Mr. Nikoupour and the Inspector disagree as to the conclusion that should be drawn from the "cosmetic" appearance of the Vehicle. Mr. Nikoupour's conclusion is that the Vehicle did not appear inoperative, disabled, dismantled or junked. The Inspector concluded that the Vehicle did appear inoperative, disabled, dismantled or junked.

The Hearings Officer finds that the Inspector's conclusion (appeared inoperative, disabled, dismantled or junked) is based upon the appearance and condition of the Vehicle on November 23, 2009 and November 30, 2009. The Hearings Officer finds that a vehicle without a front bumper, with plastic covering a partially opened window, dents in the body and a "broken" dashboard creates a reasonable impression that the vehicle is disabled. Further, the Inspector noted (Exhibit 6) that the Vehicle had not been moved between November 23, 2009 and November 30, 2009. The Hearings Officer finds the lack of movement of the Vehicle for approximately one week is additional evidence that the Vehicle is inoperative. The Hearings Officer finds, irrespective of whether the Vehicle was actually operative, the visual appearance of the Vehicle and its lack of movement are sufficient to allow the Inspector to conclude that the Vehicle appeared inoperative or disabled. The Hearings Officer finds that the appearance and condition of the Vehicle on November 23, 2009 and also November 30, 2009 were sufficient to conclude the vehicle met the definition of an abandoned vehicle (PCC 16.90.005).

The Hearings Officer finds Mr. Nikoupour did not offer any evidence that the Tow Warning Notice was not placed on the Vehicle on November 23, 2009. The Hearings Officer finds the Tow Warning Notice was placed on the Vehicle on November 23, 2009 (see photos in Exhibit 7). The Hearings Officer finds that the Tow Warning Notice was placed on the Vehicle more than 72 hours before the Vehicle was towed.

The Hearings Officer finds that the Inspector followed all relevant laws/rules. The Hearings Officer finds that the tow of the Vehicle on November 30, 2009 is valid.

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: December 18, 2009
GJF:rs/cb



Gregory J. Frank, Hearings Officer

Bureau: Abandoned Autos
Tow Number: 23698

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Hearing request form	Nikoupour, Amir Hossein	Received
2	Receipt and Towed Vehicle Report	Nikoupour, Amir Hossein	Received
3	Tow Desk printout	Hearings Office	Received
4	Hearing Notice	Hearings Office	Received
5	Tow Hearings Process Info. sheet	Hearings Office	Received
6	Tow hearing report	Abandoned Autos	Received
7	Photos	Abandoned Autos	Received
8	Parking violation	Abandoned Autos	Received
9	Case detail	Abandoned Autos	Received