



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

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HEARINGS OFFICER'S ORDER

APPEAL OF STEVE BLAINE

CASE NO. 1090277

DESCRIPTION OF VEHICLE: BMW X3 (OR KCAZZO)

DECISION WITHOUT AN APPEARANCE

HEARINGS OFFICER: Mr. Gregory J. Frank

Mr. Steve Blaine requested that the Hearings Officer make a decision without his personal appearance at a hearing (Exhibit 8). The Hearings Officer, pursuant to the Tow Hearings Officer Rules and Regulations (ADM-9.03, section 2-6), is authorized to make tow appeal decisions based upon the documents admitted into the evidentiary record. In this case, the documents admitted into the evidentiary record are Exhibits 1 through and including 13.

Mr. Blaine, in Exhibit 1 (request for a tow hearing), stated that his vehicle was "parked in a steep spot on 24th and NW Irving. Even though it was left in 1st gear and the parking brake was set, the car slowly slipped down the hill – a few inches at a time. The tow truck driver can verify this. It turns out that the car had recently been serviced by the dealer and the brake adjustment was not set properly. It's a manual shift car and the problem had never occurred before. I simply did not know this could happen. A passerby blocked the wheels and called the police. The car was towed just before I returned."

Mr. Blaine submitted an additional letter (Exhibit 8) providing further explanation. In Exhibit 8, Mr. Blaine reiterated his comments regarding the parking brake and the vehicle slipping slowly down the hill. Mr. Blaine, in Exhibit 8, also stated that his vehicle had "major service" done on his vehicle on September 30, 2009 and during that service "the parking brake was adjusted, but apparently, not correctly." Mr. Blaine attached, to Exhibit 8, a document from the "dealer" showing that the parking brake was checked and adjusted. Exhibit 12, a document also submitted by Mr. Blaine, is another document from the "dealer" with comments regarding the parking brake.

An "Investigation Report" was submitted by a Portland Police Officer who ordered Mr. Blaine's vehicle towed on December 12, 2009. (Exhibit 7). The narrative section of Exhibit 7 states that Officer Engweiler received a radio call

"about a vehicle rolling down a hill at nw 24/nw irving. Arrived and found the vehicle kcazzo in the middle of nw irving. Someone had put cement blocks behind both rear tires to prevent it from rolling any farther. Attempted to contact Blaine at his listed residence but was unsuccessful. As the vehicle blocked the whole lane of traffic and was rolling down Irving towards traffic on nw 24th, I ordered the vehicle towed. Security tow arrived and towed the vehicle. Cited vehicle for hazard."

The Hearings Officer must find a tow valid if the Hearings Officer finds that the person ordering the tow followed the relevant laws/rules. In this case, the relevant laws/rules are found in the Portland City Code ("PCC") Title 16. The specific sections of PCC Title 16 that are relevant to this case are found in PCC 16.20.120 Q, PCC 16.30.210 A.2 and PCC 16.30.220 A and D. PCC 16.20.120 Q states that it is unlawful to park or stop a vehicle in a manner that creates a traffic hazard impeding the safe movement of vehicular or pedestrian traffic. PCC 16.30.210 A.2 states that a vehicle may be towed and held at the expense of the owner or person entitled to possession thereof if the vehicle is in the public right-of-way and the vehicle is parked/stopped unlawfully in a manner that may be hazardous to traffic. PCC 16.30.220 A authorizes a police officer to order a vehicle towed, without prior notice, if the vehicle is impeding or likely to impede the normal flow of vehicular traffic. PCC 16.30.220 D permits a police officer to order a vehicle towed, without prior notice, if the vehicle poses an immediate danger to public safety.

The Hearings Officer finds that there is no dispute between Mr. Blaine (Exhibits 1, 8 and 12) and the police officer's report (Exhibit 7) that Mr. Blaine's vehicle slowly rolled down a hill. It does not appear to the Hearings Officer that Mr. Blaine challenges the police officer's statement (Exhibit 7) that Mr. Blaine's vehicle ended up, with blocks to keep it from rolling further, in a vehicular travel lane on NW Irving. It does not appear to the Hearings Officer that Mr. Blaine is challenging the police officer's characterization of Mr. Blaine's vehicle as creating a hazardous condition on NW Irving. The Hearings Officer finds that Mr. Blaine's primary assertion is that it was not his fault, but rather the fault of the "dealer" who did maintenance on his vehicle, that the vehicle rolled down the hill and was stopped in a travel lane of NW Irving. The Hearings Officer finds credible Mr. Blaine's statements/evidence that his vehicle was serviced, including parking brake, and that the parking brake did subsequently fail to adequately restrain movement of the vehicle.

The Hearings Officer finds that Mr. Blaine's vehicle, on December 12, 2009, did end up stopped on NW Irving in a travel lane and that the location of the vehicle created a hazardous condition for other vehicles using NW Irving. The Hearing Officer finds that on December 12, 2009 Mr. Blaine's vehicle was parked unlawfully under PCC 16.20.120 Q. The Hearings Officer finds, because the vehicle was stopped unlawfully on NW Irving, Mr. Blaine's vehicle could be towed and held at the owner's expense under PCC 16.30.210 A.2. The Hearings Officer finds that no prior notice to the owner was required, in this case, because the vehicle was impeding normal flow of vehicular traffic (PCC 16.30.220 A) and posed an immediate danger to public safety (PCC 16.30.220 D). The Hearings Officer finds that Officer Engweiler, the police officer who ordered Mr. Blaine's vehicle towed on December 12, 2009, followed the relevant laws/rules. The Hearings Officer finds the tow of Mr. Blaine's vehicle on December 12, 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: January 8, 2010

GJF: cb



Gregory J. Frank, Hearings Officer

Bureau: Police
Tow Number: 24753

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Letter	Blaine, Steve	Received
2	Receipt	Blaine, Steve	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	Hearings Office	Received
7	Investigation Report	Hearings Office	Received
8	Letter requesting decision without appearance	Blain, Steve	Received
9	Vehicle maintenance checklist	Blaine, Steve	Received
10	Invoice from Rasmussen BMW	Blaine, Steve	Received
11	1/4/10 letter addressed to LaVonne Griffin-Valade	Blaine, Steve	Received
12	Rasmussen BMW Invoice	Blaine, Steve	Received
13	Copy of envelope addressed to LaVonne Griffin-Valade with incomplete address	Blaine, Steve	Received