



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

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HEARINGS OFFICER'S ORDER

APPEAL OF REBECCA GUNDLE

CASE NO. 1090301

DESCRIPTION OF VEHICLE: Volvo 850 (OR TZZ601)

DATE OF HEARING: January 12, 2010

APPEARANCES:

Rebecca Gundle, appellant

HEARINGS OFFICER: Mr. Gregory J. Frank

Ms. Rebecca Gundle appeared at the hearing and testified on her own behalf. The Hearings Officer makes this decision based upon the testimony of Ms. Gundle and the documents admitted into the evidentiary record (Exhibits 1 through and including 11). The Hearings Officer notes that Exhibit 10, an exhibit with two photos submitted by the Parking Enforcement Officer who ordered Ms. Gundle's vehicle towed, contains one photo of the license plate Ms. Gundle's vehicle and a second photo that is totally black. The Hearings Officer did not consider the totally black photo (photo on the right side of Exhibit 10) when making this decision.

Ms. Gundle testified that on December 21, 2009, at approximately 9:30 p.m., she parked her vehicle on SE 35th Place. Ms. Gundle stated that she was aware of the location of a commercial driveway and when she got out of her car she checked the location of the rear end of the vehicle. Ms. Gundle, using Exhibit 11, identified the location where she parked in relation to the driveway. Ms. Gundle marked that back end of her car was located in line with a sign post.

The Parking Enforcement Officer submitted, in addition to Exhibit 10, two additional documents. Exhibit 8 is a Tow Hearing Report and Exhibit 9 is a copy of the parking violation. Exhibit 10 states, in the narrative section, that the Parking Enforcement Officer

“responded to service request J19. Vehicle was approximately 4 feet into driveway at rear. This driveway is a commercial driveway. Upon arrival I encountered employees waiting to maneuver a large truck into the lot.”

Exhibits 8 and 9 indicate Ms. Gundle's vehicle was towed for blocking a driveway.

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 16.20.130 V., PCC 16.30.220B and PCC 16.90.105.

PCC 16.20.130 V states that it is unlawful to park or stop a vehicle in front of any portion of a driveway ingress/egress to the public right-of-way. PCC 16.90.105 defines a "driveway" for the purposes of Title 16. In summary, PCC 16.90.105 defines a "driveway" as an access extending from a public right-of-way onto private or public lands for the purpose of gaining vehicular access to such areas, and reasonably designated at the property line so as to be an obvious opening for access. For the purposes of enforcement a driveway extends from one curb return to the other and if winged, includes the wings. PCC 16.30.220 B permits a vehicle to be towed without prior notice and stored, at the owner's expense, in a location where parking is prohibited.

The Hearings Officer finds that the testimony of Ms. Gundle and the Parking Enforcement Officer are at odds with respect to the location where Ms. Gundle parked. On the one hand the Parking Enforcement Officer, as part of his/her regular duties, views the locations of vehicles in an unbiased manner. On the other hand Ms. Gundle appeared to be a credible witness who, on the evening of December 21, 2009, was aware of the driveway and parked in a manner to avoid being "in" the driveway. Had the photo in Exhibit 10 that is totally black had been clear in showing the location of Ms. Gundle's vehicle "in" the driveway the Hearings Officer would have likely found the tow valid. However, the photo provided no assistance in discerning the location of Ms. Gundle's vehicle.

The Hearings Officer, based upon the evidence in the record, finds that the City failed to submit persuasive evidence to contradict Ms. Gundle's testimony. The Hearings Officer finds that that City failed to carry its burden of persuasion in this case. The Hearings Officer finds, based upon the evidence in the record, that Ms. Gundle's vehicle was not parked in a driveway in violation of PCC 16.20.130V. The Hearings Officer finds the tow of Ms. Gundle's vehicle on December 21, 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.

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

Dated: January 13, 2010
GJF: cb



Gregory J. Frank, Hearings Officer

Bureau: Parking Enforcement
Tow Number: 25358

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
1	Letter	Gundle, Rebecca	<u>Received</u>
2	Order to Tow Vehicle	Gundle, Rebecca	<u>Received</u>
3	Receipt	Gundle, Rebecca	<u>Received</u>
4	Photo	Gundle, Rebecca	<u>Received</u>
5	Tow desk printout	Hearings Office	<u>Received</u>
6	Hearing notice	Hearings Office	<u>Received</u>
7	Tow hearing info. sheet	Hearings Office	<u>Received</u>
8	Tow hearing report	Parking Enforcement	<u>Received</u>
9	Parking Violation	Parking Enforcement	<u>Received</u>
10	Photos	Parking Enforcement	<u>Received</u>
11	Google Map Photo of tow location w/handwritten marks by appellant where parked	Gundle, Rebecca	<u>Received</u>