



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

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HEARINGS OFFICER'S ORDER

APPEAL OF WENDY PALAFOX

CASE NO. 1100006

DESCRIPTION OF VEHICLE: GMC Truck (OR 470EBT)

DATE OF HEARING: January 19, 2010

APPEARANCES:

None

HEARINGS OFFICER: Mr. Gregory J. Frank

Ms. Palafox was sent a Notice of Hearing on January 8, 2010. The mailed Notice of Hearing was not returned by the United States Postal Service. Ms. Palafox did not contact the Hearings Office and request the hearing be rescheduled. Ms. Palafox did not appear at the hearing. The Hearings Officer makes this decision based upon the documents admitted into the evidentiary record (Exhibits 1 through and including 9).

Ms. Palafox submitted a narrative explanation why she believed the tow of her vehicle, on December 30, 2009, was not valid (Exhibit 1). Ms. Palafox stated (Exhibit 1) that her husband was driving her vehicle, on the evening of December 29, 2009, up the ramp to the St. John's Bridge. Ms. Palafox stated that weather conditions (snow) made the conditions slippery and her husband was forced to stop the vehicle partway up the ramp to the St. John's Bridge. Ms. Palafox stated that her husband talked with a police officer who told Mr. Palafox to "leave the truck right there that he'll be there during the night. So my husband left it there trusting that the police officer said that. However the next morning when he went to get the truck it was gone." Ms. Palafox suggests that since the police officer told her husband to leave the truck, and he did leave the truck, the tow should not be considered valid.

The person who ordered Ms. Palafox's vehicle towed (Cowles) submitted a written statement (Exhibit 8). The Hearings Officer has extracted the most relevant sections of Mr. Cowles' statement in Exhibit 8.

"On December 30, 2009 in the early morning hours while on duty as the night shift supervisor for snow and ice removal from ODOT maintained roads and highways, I was alerted by an employee of a mid 1990's dark colored Chevrolet pickup that was abandoned in the middle of the uphill lanes on NW Bridge Ave. The employee was driving a 10 wheel (10 yard) sanding truck with a front bumper mounted plow. The employee told me the could not pass the abandoned vehicle without traveling uphill into the oncoming downhill traffic lanes and that anyone else, public or ODOT, would have to

'go around' the abandoned vehicle, against oncoming traffic to pass...I called our ODOT dispatch with a description of, a location of, and an explanation of the reason for the hazard tow."

The Hearings Officer finds that the uphill ramp to the St. John's Bridge is part of Highway 30 and subject to the jurisdiction of ODOT. The Hearings Officer finds that ODOT is granted the authority to tow a vehicle, without prior notice and at the expense of the vehicle owner, if the vehicle is on a State Highway and is parked in a travel lane (ORS 819.120 and OAR 734-020-0147). The Hearings Officer finds that Ms. Palafox's vehicle was parked within the travel lane of Highway 30 (uphill on ramp to the St. John's Bridge) on December 30, 2009. The Hearings Officer finds that Ms. Palafox's vehicle constituted a "hazard" on December 30, 2009, and therefore was subject to being lawfully towed by ODOT without prior notice to the vehicle owner.

The Hearings Officer will not address the alleged comments by a police officer to Mr. Palafox on the evening of December 29, 2009. The only relevant issue before the Hearings Officer, in this case, is whether or not Ms. Palafox's vehicle was a "hazard" on a State Highway on December 30, 2009. That issue was addressed above.

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 21, 2010

GJF:cb/rs



Gregory J. Frank, Hearings Officer

Bureau: ODOT
Tow Number: 25744

Enclosure

| Exhibit # | Description | Submitted by | Disposition |
|-----------|--|-------------------|-------------|
| 1 | Letter | Palafox, Wendy | Received |
| 2 | Receipt | Palafox, Wendy | Received |
| 3 | Copy of Title | Palafox, Wendy | Received |
| 4 | Tow desk printout | Palafox, Wendy | Received |
| 5 | Hearing notice | Hearings Office | Received |
| 6 | Tow hearing info. sheet | Hearings Office | Received |
| 7 | Incident report | ODOT/Geoff Bowyer | Received |
| 8 | Letter from David Cowles ODOT Crew Coordinator | ODOT/Geoff Bowyer | Received |
| 9 | Photo/aerial | ODOT/Geoff Bowyer | Received |