



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

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**HEARINGS OFFICER'S ORDER**

APPEAL OF MICHAEL CARR

CASE NO. 1090264

DESCRIPTION OF VEHICLE: Mercedes S550 (CL26975)

DATES OF HEARINGS: December 29, 2009, January 12, 2010, and January 25, 2010

**APPEARANCES:**

Mr. Edward LeClaire, Attorney for Mr. Carr  
Ms. Misty Johnson, Attorney for the Port of Portland

HEARINGS OFFICER: Mr. Gregory J. Frank

Mr. Edward LeClaire, attorney, appeared as the appellant's representative. Ms. Misty Johnson, Port of Portland Legal Counsel, appeared and represented the Port of Portland. Officer Ramiro Martinez appeared as a witness under the direction of a subpoena issued by the Hearings Officer (Exhibit 14). The Hearings Officer makes this decision based upon the testimony of Officer Martinez, argument presented by Mr. LeClaire and Ms. Johnson and the documents admitted, without objection from either party, into the evidentiary record (Exhibits 1 through and including 16).

Officer Martinez provided the only testimony/evidence related to the events occurring prior to the ordering of Mr. Carr's vehicle towed on November 24, 2009. Officer Martinez stated that on November 24, 2009, he received a call from his dispatch that a non-injury accident had occurred at or near the long-term parking lot at the Portland International Airport. Officer Martinez stated that one vehicle, from the suspected accident (Audi) was located beyond/outside the pay station gate and the other vehicle (Mr. Carr's vehicle) was located just inside the pay station gate. Officer Martinez testified that he talked with a pay station attendant (Thomas Ambros), the driver of the Audi, and Mr. Carr. Officer Martinez stated he did not personally see any accident between the Audi and Mr. Carr's vehicle. Officer Martinez stated that only after arresting Mr. Carr did he view a video of the incident. Officer Martinez stated that Mr. Carr told him that the driver of the Audi backed into his vehicle.

Officer Martinez testified that Mr. Carr admitted, on November 24, 2009, that he had a couple of glasses of wine on a flight. Officer Martinez stated he believed that Mr. Carr was intoxicated to the level that he could not safely care for himself. Officer Martinez stated that Mr. Carr was arrested on the basis of disorderly conduct and reckless driving. Officer Martinez stated that Ms. Carr, a passenger in Mr. Carr's vehicle, exhibited slurred speech, the smell of an alcoholic beverage on her breath, and also she admitted that she had been drinking alcoholic beverages while on a flight. Officer Martinez stated that

Ms. Carr appeared to be more intoxicated than Mr. Carr. Officer Martinez stated that Ms. Carr refused to obey a lawful order by a police officer and was arrested for interfering with a police officer.

Officer Martinez testified that Mr. Carr's vehicle was blocking an exit and that both Mr. and Ms. Carr were taken into custody. Officer Martinez stated that Mr. Carr's vehicle was towed because his vehicle was blocking an exit lane, no person was on site available to drive Mr. Carr's vehicle away from the location where it was parked, and both Mr. and Ms. Carr appeared to be intoxicated. Officer Martinez acknowledged that there are five pay station exits for the long-term lot and Mr. Carr's vehicle was blocking only one of the exits. Officer Martinez stated that blocking a single pay station exit impedes the normal flow of vehicular traffic.

The City of Portland Code Hearings Officer is authorized, by an Intergovernmental Agreement between the City of Portland and the Port of Portland, to conduct tow hearing appeals related to the towing of vehicles from Port of Portland property. The duty of the City of Portland Code Hearings Officer is to hear appeals made by persons whose vehicles are towed on Port property and request a hearing. The City of Portland Code Hearings Officer is charged with determining if the Port-ordered tow and/or storage are valid. Based upon the statements of Officer Martinez, Mr. Carr's vehicle was towed because it was impeding the normal flow of vehicular traffic and the vehicle was driven by a person who was taken into custody by a law enforcement officer.

Port of Portland Ordinance 360, section 2. C authorizes a Port officer to order a vehicle towed, without prior notice to the vehicle owner, if the vehicle is impeding or likely to impede the normal flow of vehicular or pedestrian traffic and if the vehicle was driven by a person who was taken into custody by a federal, state or local enforcement officer. The Hearings Officer finds the testimony of Officer Martinez to be credible and accurately reflect the events leading up to the ordering of the tow of Mr. Carr's vehicle on November 24, 2009. Although Mr. LeClaire, through cross examination of Officer Martinez, attempted to challenge the necessity of Officer Martinez's arrest of Mr. Carr, the Hearings Officer finds there is no evidence in the record to contradict Officer Martinez's testimony regarding the location where Mr. Carr's vehicle was parked (prior to the tow) or the actual arrest and taking into custody of Mr. and Ms. Carr.

Based upon the evidence in the record, the Hearings Officer finds that Mr. Carr's vehicle was impeding the normal flow of traffic by being parked in a manner that blocked a pay station at the long term parking lot. Further, the Hearings Officer finds that Mr. Carr (driver) and Ms. Carr (passenger) were taken into custody by a Port police officer (see also, Exhibit 1 – Mr. Carr's request for a hearing – "My wife and I were arrested on 11/24/09"). The Hearings Officer finds that Mr. Carr's vehicle was ordered towed consistent with Port of Portland Ordinance 360, section 2.C and therefore the tow of Mr. Carr's vehicle on November 24, 2009 is valid.

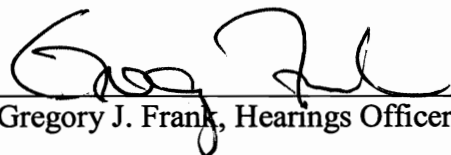
The Hearings Officer notes that neither Mr. LeClaire nor Ms. Johnson raised any procedural or legal issues regarding the process used by the Hearings Officer during this hearing.

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 26, 2010

GJF:rs

  
Gregory J. Frank, Hearings Officer

Agency: Port of Portland

Tow Number: 9451630

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Letter	Carr, Michael	Received
2	Tow Desk printout	Hearings Office	Received
3	Tow Hearing Notice	Hearings Office	Received
4	12/7/09 letter from Edward Herbert	Port of Portland	Received
5	360: Towing and Storage of Vehicles on Port Property	Port of Portland	Received
6	Request to reschedule	Carr, Michael	Received
7	Hearing Notice	Hearings Office	Received
8	Request to reschedule	Carr, Michael	Received
9	Rescheduled hearing notice	Hearings Office	Received
10	Continued hearing notice	Hearings Office	Received
11	1/11/10 letter from Edward A. Herbert	Port of Portland	Received
12	Subpoena signed by Edward T. LeClaire	Portland of Portland	Received
13	Request for subpoena	LeClaire, Edward	Received
14	FILE COPY of Subpoena	Hearings Office	Received
15	1/22/10 request to reschedule	Hain, Wendy	Received
16	1/22/10 letter opposing request to reschedule	LeClaire, Edward	Received