



CITY OF

PORTLAND, OREGON

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HEARINGS OFFICER'S ORDER

APPEAL OF ALLISON MCMANUS

CASE NO. 1100021

DESCRIPTION OF VEHICLE: Honda Accord (OR 512EEH)

DATE OF HEARING: February 4, 2010

APPEARANCES:

Ms. Allison McManus, Appellant

HEARINGS OFFICER: Mr. Gregory J. Frank

Ms. McManus appeared at the hearing and testified on her own behalf. The Hearings Officer makes this decision based upon the testimony of Ms. McManus and the documents admitted into the evidentiary record (Exhibits 1 through and including 9). Ms. McManus did object to Exhibit 7. Exhibit 7 is a document submitted by the Parking Enforcement Officer who ordered Ms. McManus' vehicle towed and contained four very dark photos. The Hearings Officer admitted Exhibit 7, as it was relevant to the case at hand, but noted to Ms. McManus that because the photos were very dark, the Hearings Officer would give the photos little, if any, weight in the decision.

Ms. McManus testified that on January 21, 2010, she parked her vehicle in the location indicated on Exhibit 8. Ms. McManus stated that there is a usable driveway located behind the location where she parked and when she parked her vehicle on January 21, 2010 a vehicle was parked blocking the usable driveway. Ms. McManus stated that the location where she parked had a driveway appearance but was not a usable driveway as a fence had been constructed along the sidewalk blocking vehicular access to the adjoining property. The photo submitted by Ms. McManus (Exhibit 9) supports Ms. McManus' testimony that there is a fence along the adjoining property (adjacent to the sidewalk) and it does not appear that the driveway is usable. Ms. McManus stated that the bumper of her vehicle may have been partially in the driveway shown in Exhibit 8. Ms. McManus testified when she returned to her vehicle location, the vehicle parked in the usable driveway was gone and her vehicle had been towed.

The Parking Enforcement Officer, who ordered Ms. McManus' vehicle towed on January 21, 2010, submitted three documents (Exhibits 5, 6, and 7). As indicated earlier in this Order, Exhibit 7, containing very dark photos, provided little assistance to the Hearings Officer in making this decision. Exhibit 5 is a Tow Hearing Report listing details concerning the tow of Ms. McManus' vehicle and also a narrative. The narrative, in Exhibit 5, states:

"The vehicle was approximately 5 ft into gated driveway with paved throat and clear cut.
The vehicle was towed per service request from resident of 1606 NE Wygant St."

Exhibit 5 also contains a diagram showing the relative location of Ms. McManus' vehicle to Wygant Street, NE 16th and NE 17th. Exhibit 6 is a copy of a Parking Violation issued to Ms. McManus.

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 open 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 there is a conflict between where Ms. McManus testified that she parked her vehicle and where the Parking Enforcement Officer indicated that Ms. McManus' vehicle was parked prior to being towed. Although the Hearings Officer finds Ms. McManus' testimony (and photo in Exhibit 9) to appear to be credible, the Hearings Officer also finds that the Parking Enforcement Officer, through Exhibit 5, was clear that Ms. McManus' vehicle was parked closer to NE 16th than Ms. McManus' testified (and shown in the photo in Exhibit 9), and that Ms. McManus' vehicle was in a usable/functioning driveway. The Hearings Officer finds that the Parking Enforcement Officer who ordered Ms. McManus' vehicle towed had no motivation to present information that was not factual. The Hearings Officer finds that Ms. McManus does stand to benefit by presenting evidence that was not factual. The Hearings Officer finds that it is possible to determine Ms. McManus' vehicle was parked in a location other than that indicated in her testimony and also shown in Exhibit 9.

In addition to the findings in the previous paragraph, the Hearings Officer looked at the validity of the tow of Ms. McManus' vehicle on January 21, 2010 by finding that Ms. McManus was parked in the location where she testified the car was located (and shown in Exhibit 9). The Hearings Officer finds that the location where Ms. McManus stated she was parked was in the approximately the same location as the vehicle shown in Exhibit 9. Ms. McManus testified that part of her vehicle was parked in the area that looks like a driveway in the photo in Exhibit 9. PCC 16.90.105 defines "driveway" and the Hearings Officer finds that the location where Ms. McManus stated she was parked meets the definition of a driveway. The area where Ms. McManus was parked is level with the street, slopes up, has "wings" and ends at the curb. There is no absolute confirmation, from the picture in Exhibit 9, that the driveway has been permanently closed. The Hearings Officer finds that the location where Ms. McManus parked was a driveway and therefore in violation of PCC 16.20.130 V. The Hearings Officer finds, even if Ms. McManus parked in the location she indicated during her testimony, the Parking Patrol Officer who ordered the vehicle towed followed the relevant laws/rules.


The Hearings Officer finds the tow of Ms. McManus' vehicle on January 21, 2010 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: February 5, 2010

GJF:rs



Gregory J. Frank, Hearings Officer

Bureau: Parking Enforcement
Tow Number: 1311

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Hearing request letter	McManus, Allison	Received
2	Tow Desk printout	Hearings Office	Received
3	Hearing Notice	Hearings Office	Received
4	Tow Hearings Process Info. sheet	Hearings Office	Received
5	Tow Hearing Report	Parking Enforcement	Received
6	Parking Violation	Parking Enforcement	Received
7	Photos	Parking Enforcement	Received
8	Picture (hand-drawn)	McManus, Allison	Received
9	Photo on backside of Exh. 8	McManus, Allison	Received