



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

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HEARINGS OFFICER'S ORDER

APPEAL OF JAMES HAMILL

CASE NO. 1100034

DESCRIPTION OF VEHICLE: BMW 533 (OR 500DPE)

DATE OF HEARING: February 18, 2010

APPEARANCES:

Mr. James Hamill, Appellant

HEARINGS OFFICER: Ms. Christina A. Austin-Smith

Mr. Hamill appeared at the hearing and testified on his own behalf. No person appeared on behalf of the City. The Hearings Officer makes this decision based on substantial evidence upon the record as a whole, which includes the testimony of Mr. Hamill and the documents admitted into evidence (Exhibits 1 through and including 10).

Mr. Hamill testified that he did park his vehicle at 17310 SE Naegeli Street. He also stated that his vehicle was in this location on January 26, 2010 through when it was towed on February 3, 2010. Mr. Hamill stated he left his vehicle in this location because it was one block from his mechanic's home, whose shop is in the back of his house. He states that while the vehicle did need service, that it was operable. Additionally, while he concedes the vehicle did have a tire that was low on air, it was not flat and was still drivable. Mr. Hamill contends that he left his vehicle in this location while awaiting parts for his mechanic to fix the vehicle. He claims that he drove by the vehicle enroute to work each day to check on it, and at no time did he notice a tow warning sticker on the vehicle. He also testified that his mechanic never saw a tow warning sticker. Mr. Hamill submitted several photos for consideration, marked as Exhibit 9, which show his car in the lot where he retrieved it after towing. His photos illustrate that while other vehicles around it clearly have a green tow warning sticker affixed to their window, there is no sticker affixed to the window of his vehicle. The only markings visible on his vehicle are the yellow markings made by the tow company on the back window. Mr. Hamill testified that while one tire was low, it was not flat, although he did not drive it off the lot because he had brought another vehicle and trailer to transport it home. He explained he did this because the car was uninsured while he was not driving it.

The Abandoned Auto Section of the City submitted a report by Officer S. Layman and photos of the vehicle before it was towed (Exhibits 5 & 8). In the report Officer Layman states the vehicle was first found on January 26, 2010 and it appeared inoperable due to a flat right front tire. The officer stuck a tow warning notice on driver's side of the vehicle at 11:10 a.m. When the officer returned to the location on February 3, 2010, the tire was still flat and the car had seemingly not been moved. The officer cited the vehicle for towing because it

appeared inoperative or disabled. The photos submitted by Officer Layman include close ups of a wheel and tire, along with the vehicle's license plate. There are no photos of the warning sticker on the vehicle or copies of the warning notice for this vehicle in the record.

The Hearings Officer must find a tow is valid if the person ordering the tow followed the relevant laws/rules. In this case the relevant laws/rules can be found in the Portland City Code ("PCC") Title 16. PCC 16.30.210A10 permits a vehicle to be towed from a public right-of-way when it has been abandoned. Abandoned is defined in PCC 16.90.005B as a vehicle that remains in violation for more than 24 hours and the vehicle appears to be inoperative or disabled. PCC 16.30.225B permits an abandoned vehicle to be towed 72 hours after notice of intent to tow has been affixed or placed on the vehicle.

The Hearings Officer finds that while the tire in question arguably still had air in it and the vehicle could have been driven according to the owner, based on the photos and observations of Officer Layman, because of the status of the tire, and the fact that the vehicle had not been moved in 8 days, there was sufficient evidence to conclude the vehicle was abandoned in accordance with PCC 16.90.005B because it "appeared" to be inoperative or disabled. More at issue in this case is whether or not Mr. Hamill received the required 72-hour notice before his vehicle was towed. The only evidence on the record that the vehicle was warned is the statement by Officer Layman in the report that a warning was placed on the vehicle on January 26, 2010. There is no photo of this sticker on the vehicle or a copy of the warning sticker in the record. Mr. Hamill has presented evidence based on his testimony that during a daily check on the vehicle, he never saw a warning sticker. This is corroborated by his mechanic, although there is no direct evidence from the mechanic on this point. Additionally, Mr. Hamill introduced photos of his vehicle in the tow yard, that clearly indicate bright green tow warning tags on other vehicles, yet none on his vehicle. Therefore, the Hearings Officer finds that in this case there is not a preponderance of evidence on the record to conclude that the intent to tow warning sticker was properly affixed to the vehicle, invalidating this towing action.

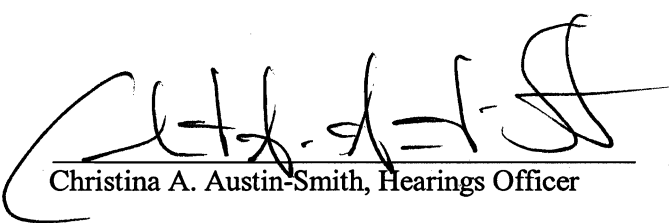
Accordingly, the owner or other persons who have an interest in the vehicle are not liable for the towing and/or storage charges. Therefore, it is ordered that the vehicle shall be immediately released, if still held, and any money heretofore paid for towing and/or storage charges shall be returned to the vehicle owner.

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

Dated: February 19, 2010

CAS:cb

Enclosure



Christina A. Austin-Smith, Hearings Officer

Bureau: Abandoned Autos
Tow Number: 2178

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
<u>1</u>	<u>Hearing request form</u>	<u>Hamill, James</u>	<u>Received</u>
<u>2</u>	<u>Tow desk printout</u>	<u>Hearings Office</u>	<u>Received</u>
<u>3</u>	<u>Hearing notice</u>	<u>Hearings Office</u>	<u>Received</u>
<u>4</u>	<u>Tow hearing info. sheet</u>	<u>Hearings Office</u>	<u>Received</u>
<u>5</u>	<u>Tow hearing report</u>	<u>Abandoned Autos</u>	<u>Received</u>
<u>6</u>	<u>Case detail</u>	<u>Abandoned Autos</u>	<u>Received</u>
<u>7</u>	<u>Parking violations</u>	<u>Abandoned Autos</u>	<u>Received</u>
<u>8</u>	<u>Photos</u>	<u>Abandoned Autos</u>	<u>Received</u>
<u>9</u>	<u>Photos (3 pages)</u>	<u>Hamill, James</u>	<u>Received</u>
<u>10</u>	<u>Tow receipt</u>	<u>Hamill, James</u>	<u>Received</u>