



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

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HEARINGS OFFICER'S ORDER

APPEAL OF MATHEW D. ISHAM

CASE NO. 1100047

DESCRIPTION OF VEHICLE: Carson Utility Trailer (CA 4EP7971)

DATE OF HEARING: March 18, 2010

APPEARANCES:

Mr. Mathew D. Isham, Appellant

HEARINGS OFFICER: Ms. Christina A. Austin-Smith

Mr. Isham 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. Isham and the documents admitted into evidence (Exhibits 1 through and including 17).

Mr. Isham submitted detailed written timelines and explanations providing information surrounding the towing of his Carson Utility Trailer on March 3, 2010 (Exhibits 1 and 16). Mr. Isham acknowledges that on February 24, 2010, he received a green tow warning tag on his trailer which was then parked at 4920 SE 71st St, Portland (Exhibit 17). Mr. Isham described this as a residential area. The warning indicated if the vehicle was not completely removed from the public right-of-way it would be towed by order of the City of Portland. Specifically it stated, "After 72 hours from the issuance of this notice, this vehicle will be towed in accordance with provisions of Section 16.30.225 of the Portland Municipal Code." The parking enforcement official who issued the tag indicated on the tag that the trailer was in violation of PCC 16.20.120P, abandoned vehicle, and PCC 16.20.120H,I, Prohibited truck, trailer, bus, RV, with the words prohibited truck and trailer underlined.

Mr. Isham testified and stated in his exhibits that after receiving this notice, he moved the truck and trailer on February 25, 2010 to his jobsite on 3356 S.E. Vineyard Avenue in Milwaukie. He then stated that on March 3, 2010, he moved the trailer back to the same location where he received the tow warning tag, because he needed to paint a fence on the jobsite and did not want any overspray hitting his truck and trailer. Mr. Isham testified that he was not with his truck and trailer at this location, but was on his motorcycle at his jobsite. Mr. Isham testified he then received phone calls from his neighbors telling him the trailer was being towed.

The Abandoned Auto Section of the City submitted a report by Officer S. Layman and photos of the trailer before it was towed (Exhibits 6 & 9). In the report, Officer Layman states the vehicle was "found where reported at

4920 SE 71^{sb}”, and was warned for prohibited trailer. Officer Layman reports returning on March 3, 2010, to “find the trailer was still in violation. It was cited at 11:00 am, with no activity at the trailer.”

The Hearings Officer must find a tow is valid if the person ordering the tow followed the relevant laws/rules. In this case, the tow warning tag indicated two basis for the tow, both of which are 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 one or more of the following conditions exist: the vehicle a) does not have a lawfully affixed, unexpired registration plate, or fails to display current registration; b) appears to be inoperative or disabled; c) appears to be wrecked, partially dismantled, or junked. PCC 16.20.120H, in pertinent part, states it is unlawful to park or stop a vehicle when the vehicle is a truck, a truck trailer, a motor bus, a recreational vehicle, a utility trailer, a drop box or storage container, or has two or more rear axles in the public right-of-way adjacent to or directly across from residential, public park, church or school property, except: 1) when loading/unloading property belonging to the occupants of or performing a service on the adjacent residence, for a period not to exceed 8 hours. PCC 16.30.225B permits a vehicle to be towed 72 hours after notice of intent to tow has been affixed to or placed on the vehicle if the vehicle is an abandoned vehicle, or PCC 16.30.225C permits a vehicle to be towed 72 hours after notice of intent to tow has been affixed to or placed on the vehicle if the vehicle is in violation of 16.20.120H or I, or 16.20.170.

The Hearings Officer finds that Mr. Isham did have his Carson Utility trailer parked in a residential neighborhood on February 24, 2010 and that he received a warning notice from the City of Portland indicating that his vehicle may be towed 72 hours after issuance of the notice, because it was in violation of two City codes. The Hearings Officer finds that Mr. Isham did move his trailer to his jobsite in Milwaukie where it remained until March 3, 2010. The Hearings Officer finds that on March 3, 2010, Mr. Isham moved his trailer back to the same residential address and location where he received the green tow warning tag on February 24, 2010. The Hearings Officer finds Mr. Isham did this because he “needed to paint a fence on the jobsite and I didn’t want any overspray hitting my truck and trailer” (Exhibit 1). The Hearings Officer finds that Mr. Isham was not with his trailer on March 3, 2010, when the parking enforcement officer ordered it towed, but was at his jobsite.

Accordingly, the Hearings Officer first finds that Mr. Isham was not in violation of PCC 16.30.210A10 for having an abandoned vehicle in the public right-of-way. There is no evidence on the record that the vehicle did not have a lawfully affixed or current registration, that it was inoperative or disabled, or that it was wrecked, partially dismantled or junked.

However, the Hearings Officer does find that Mr. Isham was in violation of PCC 16.20.120H because he did have a utility trailer in the public right-of-way adjacent to or directly across from a residential property and he was not actively unloading or loading the trailer, nor was he performing a service on the adjacent residence. The evidence submitted by Mr. Isham indicates the trailer was parked in this location because he did not want to get paint on it from his jobsite, which is where Mr. Isham was located when the trailer was towed.

PCC.16.30.225C does not allow the City to tow a vehicle in violation of PCC 16.20.120H until 72 hours after notice of intent to tow has been affixed to or placed on the vehicle. The Hearings Officer finds that notice was properly given to Mr. Isham on February 24, 2010 and that his trailer was not towed until March 3, 2010, which is past the 72 hours. Because Mr. Isham’s violation was having a utility trailer parked in the public right-of-way in a residential area while not actively loading or unloading it, or while performing a service on the adjacent residence, it is not relevant that Mr. Isham did have the vehicle parked in another location from February 25, 2010 until March 3, 2010. The 72-hour notice gives the owner notice of a violation and time to correct the violation, however in this case, Mr. Isham’s utility trailer was still in violation of PCC 16.20.120H on March 3, 2010, because he continued to park the trailer in an unlawful manner on the public right-of-way.

Therefore, 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: March 22, 2010
CAAS:rs/cb



Gregory J. Frank, Hearings Officer for
Christina A. Austin-Smith, Hearings Officer

Enclosure

Bureau: Abandoned Autos
Tow Number: 4046

Exhibit #	Description	Submitted by	Disposition
1	Hearing request letter	Isham, Mathew D.	Received
2	Tow Desk printout	Hearings Office	Received
3	Hearing Notice	Hearings Office	Received
4	Tow Hearings Process Info. sheet	Hearings Office	Received
5	Ownership letter	Hearings Office	Received
6	Tow hearing report	Abandoned Autos	Received
7	Case detail	Abandoned Autos	Received
8	Previous warning log	Abandoned Autos	Received
9	Photos	Abandoned Autos	Received
10	Parking violation	Abandoned Autos	Received
11	Apparent Duplicate of Exh. 10	Abandoned Autos	Received
12	Copy of Exh. 1 w/highlights and notations added by Abandoned Autos	Abandoned Autos	Received
13	Bill of Sale	Isham, Mathew D.	Received
14	Request for a Tow Hearing letter	Isham, Mathew D.	Received
15	Abandoned Autos Tow Request List	Isham, Mathew D.	Received
16	Copy of email stream (3 pgs)	Isham, Mathew D.	Received
17	Tow Warning copy front & back	Isham, Mathew D.	Received