



CITY OF

PORTLAND, OREGON

**OFFICE OF THE CITY AUDITOR
Hearings Office**

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HEARINGS OFFICER'S ORDER

APPEAL OF GEORGE STEVENSON

CASE NO. 1090290

DESCRIPTION OF VEHICLE: Dodge Dakota (OR WHALE)

DATE OF HEARING: January 5, 2010

APPEARANCES:

Mr. George Stevenson, Appellant

HEARINGS OFFICER: Mr. Gregory J. Frank

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

This case relates to the December 12, 2009 tow of Mr. Stevenson's vehicle and his subsequent payment of money, to the City of Portland, to facilitate the release of his vehicle. A hearing was held on January 5, 2010, where Mr. Stevenson did appear and presented evidence and argument. Mr. Stevenson stated that he wished to "create a record" for further court review in matters pertaining to the "automatic" charge of \$500 for the release of his towed vehicle. As of this issuance of this Order, the "record" consists of the oral statements made at the January 5, 2010 hearing, admitted written submissions, an Interim Order dated January 7, 2010, and this Order.

In a letter dated January 6, 2010, Mr. Stevenson requested this Hearings Officer (Frank) recuse himself. The Hearings Officer issued an Interim Order on January 7, 2010 denying Mr. Stevenson's request for recusal. The Interim Order also granted the City and Mr. Stevenson time to submit, in writing, additional evidence and argument.

The Hearings Officer admits into the evidentiary record Exhibits 1 through and including 4, 6 through and including 11, and 18 through and including 27. Exhibits 12 through and including 22 were submitted by Mr. Stevenson at the end of the January 5, 2010 hearing. The Hearings Officer did not review Exhibits 12 through and including 17 as they relate to events occurring after Mr. Stevenson's

vehicle was towed. The Hearings Officer finds that the admission of the above-referenced exhibits conforms to the Tow Hearings Officer Rules and Regulations (ADM 9.03 section 3-3). The Hearings Officer finds all of the admitted exhibits are relevant to the issues raised in this case. The Hearings Officer makes this decision based upon the testimony of Mr. Stevenson at the January 5, 2010 hearing and the admitted exhibits.

Exhibit 1, Mr. Stevenson's "Hearing Request" states the following:

"EXCESSIVE TOW FEE OF \$500

\$500 is alleged to 'reimburse the City' for 'incurred costs.'

The fee I paid is clearly 'mandatory', 'excessive', 'unreasonable', 'illegal' and a 'criminal penalty' in violation of my Constitutional and Civil Rights as follows:

U.S. Constitution:	Equal Protection <u>AND</u> Due Process
Oregon Constitution:	Equal Privileges & Immunities <u>AND</u> Due Process
City Charter of Portland:	Consistency With State Criminal Law (Title 1)

REQUEST HEREBY IS MADE FOR FULL AND IMMEDIATE REIMBURSEMENT OF \$500.00 PLUS ACCRUED INTEREST FOR FAILURE TO DO SO."

The Towing Hearings Officer Rules and Regulations (ADM 9.03, section 3-2) state that "the issues to be determined at hearing shall be limited to those set forth in the Request for Hearing." The Hearings Officer, therefore, will consider the issues raised by Mr. Stevenson to only be those quoted above.

At the beginning of Mr. Stevenson's hearing, the Hearings Officer described the role of the City of Portland Tow Hearings Officer. The Hearings Officer stated the City of Portland Tow Hearings Officer's role is to determine the validity of a tow; did the person ordering an appellant's vehicle towed follow the relevant laws and rules.

Mr. Stevenson made it clear, in Exhibit 1 and throughout the January 5, 2010 hearing, that the basis of his appeal related to the \$500 charged for the release of his vehicle.

In prior tow appeals heard by this Hearings Officer, appellants or attorneys on behalf of appellants, have raised in a general manner, the validity of the fees charged by the City for the release of a vehicle ordered towed by the police. In each of these prior cases, a ground independent of the fees charged provided the basis for finding the tow invalid. At the January 5, 2010 hearing, the Hearings Officer indicated to Mr. Stevenson that the excessive fee issue was one that he would like addressed adequately by the parties.

Was the tow of Mr. Stevenson's vehicle on December 12, 2009 valid?

Portland City Code ("PCC") 16.30.410 establishes the Tow Hearings Officer's authority to hear appeals related to certain/identified vehicle tows. PCC 16.30.410 A states, in relevant part, that the owner of the vehicle is "entitled to request a hearing to contest the validity of the tow." PCC

16.30.410 C states that "the request for hearing must be in writing and will state the grounds upon which the person requesting the hearing believes the tow or proposed tow is invalid, or, for any other reason, unjustified." PCC 16.30.420 A states "the hearing shall afford a reasonable opportunity for the person(s) requesting it to demonstrate by the statements of witnesses or other evidence, that the tow and/or storage of the vehicle was or would be invalid, or for any other reason not justified." PCC 16.30.520 B provides that a vehicle towed pursuant to PCC 16.30.220 K (probable cause that operator violated ORS 813.010) shall be released upon the "payment of towing, storage and payment of an administrative fee to the police agency."

PCC 16.30.430 A states, in part, that "if the Tow Hearings Officer finds the tow and/or storage was or would be invalid or not justified, the Tow Hearings Officer will order the vehicle: Be immediately released if already towed. The owner(s) or any other person(s) who have an interest in the vehicle are not liable for the tow and/or storage charges and if any money paid for tow and/or storage charges will be returned, as appropriate." PCC 16.30.440 states that "if the Tow Hearings Officer finds the towing and/or storage was or would be valid, the Tow Hearings Officer will order the vehicle, if still held, continue to be held until all towing and storage charges and an administrative fee are paid."

PCC 16.30.001, the purpose section of PCC 16.30, states that "this section describes when a vehicle may or will be towed for parking violation(s), the manner of the towing, storage of the vehicle, and the release or disposition of the vehicle." PCC 16.30.100 A states that "any officer authorized by the City Council or by City Code may order a vehicle towed as provided in this Title." PCC 16.30.100 B states that the "authority to establish procedures in this Title for the disposition of towed vehicles is authorized by Oregon Law. Disposition of vehicles towed under authority of this Title must follow the procedures established by this Title."

PCC 16.30.220 K.4 states that "any authorized officer may, without prior notice, order a vehicle towed, when a police officer has probable cause to believe that the vehicle's operator has committed any of the following offenses: Driving while under the influence of intoxicants (ORS 813.010)."

Based upon the above sections of PCC Title 16, the Hearings Officer finds that City Council granted authority to the Tow Hearings Officer to consider whether or not a tow ordered by a representative of the City of Portland is valid. The Hearings Officer finds, for example, a tow ordered under the authority of PCC 16.30.220 K.4 would be valid if a Portland police officer had probable cause to believe that the operator of a vehicle had been driving in violation of ORS 813.010 (driving under the influence of intoxicants).

Mr. Stevenson, during the January 5, 2010 hearing, stated that he did not want to talk about the validity of the tow. Mr. Stevenson did not object to, or contest, statements made by Portland police officers (Exhibits 7 and 8) involved in stopping Mr. Stevenson's vehicle on December 12, 2009. The only evidence, therefore, in the record regarding the events leading to the police officer ordering Mr. Stevenson's vehicle towed on December 12, 2009 are the reports filed by the police (Exhibits 7 and 8). The Hearings Officer finds the reports are credible and are an accurate recounting of the events leading up to the ordering of Mr. Stevenson's vehicle towed on December 12, 2009.

Mr. Stevenson's vehicle was towed, on December 12, 2009, because the police officer stated that he had probable cause to believe that Mr. Stevenson was driving under the influence (Exhibit 10).

Probable cause is defined as when “there is a substantial objective basis for believing that it is more likely than not an offense has been committed and a person to be arrested has committed it” (ORS 131.005 [11]). Probable cause does not require certainty or proof beyond a reasonable doubt, which is necessary to convict an individual of a crime. *State v. Spicer*, 254 Or 68, 70 (1984) Oregon courts have considered factors such as lack of balance, watery/bloodshot eyes, attitude, slurred speech, smell of alcohol, and other actions which can be considered unusual and improper behavior. *State v. Wetzell*, 148, Or App 122 (1997)

The Hearings Officer finds that the police officer who initiated the traffic stop of Mr. Stevenson’s vehicle on December 12, 2009 stated that he observed Mr. Stevenson driving the wrong way on SE Hawthorne Street (vicinity of SE 6th), proceed through an intersection going the wrong way, create a safety risk to another vehicle (the other vehicle was traveling the correct direction), drive his vehicle in a weaving fashion, and fail to yield to a police car with its emergency lights flashing (Exhibit 8). The police officer’s report also stated that Mr. Stevenson’s eyes were red and watery, he smelled of an alcoholic beverage, he admitted to having consumed “a few drinks” and exhibited erratic behavior towards the police officers (Exhibit 8). The Hearings Officer finds that the preceding observations by the police officers provide an objective basis to conclude that Mr. Stevenson had been driving his vehicle under the influence of intoxicants (violation of ORS 813.010). The Hearings Officer finds that the police officer who ordered Mr. Stevenson’s vehicle towed on December 12, 2009 had probable cause to believe Mr. Stevenson had violated ORS 813.010. The Hearings Officer, therefore, finds that the tow of Mr. Stevenson’s vehicle, on December 12, 2009, is valid.

PCC 16.30.410 et al, in addition to empowering the Tow Hearings Officer to determine if a tow of a vehicle is valid, permits the Tow Hearings Officer to consider if the tow is for any other reason not justified. The Hearings Officer will next consider whether or not Mr. Stevenson’s allegation that the \$500 charge to release his vehicle fits within the PCC 16.30.410 “any other reason not justified” language.

The Hearings Officer finds that the language “any other reason not justified” refers to whether or not the ordering of the tow was justified. The Hearings Officer finds that “any other reason not justified” relates to whether or not the person who ordered the tow was justified in ordering the tow.

The Hearings Officer finds support for this interpretation is contained in PCC 16.30.430 and PCC 16.30.440. PCC 16.30.430 sets forth the consequences if the Tow Hearings Officer finds a tow “invalid or not justified.” In such event, PCC 16.30.430 directs the Tow Hearings Officer to order the vehicle released or, if already released, the owner is entitled to have any tow/storage charges returned. PCC 16.30.440 sets forth the consequences of finding a tow valid. PCC 16.30.440 provides, if the Tow Hearings Officer finds a tow valid the vehicle will continue to be held until “all towing and storage charges and an administrative fee are paid.” PCC 16.30.430 and PCC 16.30.440 indicate that the consequences of a tow being valid or not valid relate to whether or not the vehicle must be released and money refunded. The inquiry of the Tow Hearings Officer into the validity or justification of the tow leads to the consequences of the disposition of the vehicle and payment/refund obligation. The inquiry into the validity or justification of the tow does not normally involve, under PCC Title 16, an analysis of the amounts charged to the owner to obtain a release of their vehicle.

Was the amount Mr. Stevenson was required to pay to the City legally supportable?

Mr. Stevenson argues that ORS 809.716 (4) and ORS 809.720 apply to this case. Therefore, in this case, the amount charged to the owner to obtain a release of his vehicle should be addressed.

The Hearings Officer notes that ORS 809.716(4) and ORS 809.720 are found in a section of the Oregon statutes dealing with "Vehicle Impoundment." ORS 809.720 identifies when a person's vehicle may be towed for a specified list of offenses. One of the specified offenses in ORS 809.720 is "driving while under the influence of intoxicants in violation of ORS 813.010." ORS 809.720 (b) states that a police officer who has probable cause to believe that a person, at or just prior to the time the police officer stops the person "is driving under the influence of intoxicants." As found by the Hearings Officer earlier in this Order, the police officer who ordered Mr. Stevenson's vehicle towed on December 12, 2009 did have sufficient objective evidence to find probable cause that Mr. Stevenson had been driving his vehicle in violation of ORS 813.010.

ORS 809.720 (3)(c) states that a vehicle impounded, for example on the basis that a police officer had probable cause to believe the driver was driving in violation of ORS 813.010, "shall be released" upon the "payment to the police agency of an administrative fee determined by the agency to be sufficient to recover its actual administrative costs for the impoundment."

Ms. Osoinach, City Attorney representing the City in this matter, submitted information regarding the administrative fee (Exhibit 25). Ms. Osoinach stated in Exhibit 25:

"the [police] bureau charges \$350 to recover the administrative costs related to the impoundment of a vehicle where a driver was under the influence of intoxicants. The costs include the time that officers spend writing the reports that establish the validity of the tow and a sergeant's review of those reports; the records division's management and distribution of the tow reports; and expenses for ensuring compliance with the Oregon Revised Statute's release requirements around insurance, driving privileges, security interest holders, and ownership."

Mr. Stevenson objects to the total amount he was required to pay to obtain a release of his vehicle following the December 9, 2009 tow (Exhibits 1, 24 and 26). In Exhibit 26, Mr. Stevenson responds to Ms. Osoinach's Exhibit 25 comments by stating:

"The CA portends there exists a PPB '\$350.00' administrative fee yet provides zero evidence where it exists; how it was determined, or its breakdown."

It does not appear to the Hearings Officer that Mr. Stevenson is disputing that ORS 809.720 (3)(c) authorizes the City to charge an administrative fee. What the Hearings Officer finds Mr. Stevenson is contesting is that the actual administrative fee charged in his case does not meet the requirements of ORS 809.720 (3)(c).

ORS 809.720 (3)(c) states that the administrative fee is to be "determined by the agency to be sufficient to recover its actual administrative costs for the impoundment." Despite Mr. Stevenson's protestations to the contrary, Ms. Osoinach provided a *statement* that "the bureau charges \$350 to recover its administrative costs" (Exhibit 25). Ms. Osoinach goes on to list items the \$350 administrative fee covers (Exhibit 25). The Hearings Officer agrees that Ms. Osoinach did not provide

a precise enumeration of police activities and their respective costs in calculating the \$350 administrative fee.

Mr. Stevenson argues that Ms. Osoinach's statements, as quoted above, should be dismissed from the Hearings Officer's consideration because they are "pure hearsay." The Hearings Officer notes that the only evidence in the record related to the existence and amount of the administrative fee is the Ms. Osoinach statement quoted above. The Hearings Officer finds that hearsay evidence is admissible, under ORS 183.450(1), as long as it meets the statutory test of reliability. *Reguero v. Teacher Standards and Practices*, 312 Or 402 (1991). The Hearings Officer notes that ORS 183.450(1) is substantially the same as set forth in the Towing Hearings Officer Rules and Regulations (ADM 9.03 section 3-3). The Hearings Officer finds that the test of reliability, in both ORS 183.450(1) and ADM 9.03 section 3-3, is whether the evidence is the type relied upon by reasonably prudent persons in the conduct of their serious affairs. The Hearings Officer finds the representation by Ms. Osoinach is reliable to the extent that no contradictory evidence is in the record. The Hearings Officer, certainly, would have preferred the City provide additional supporting information related to specific administrative costs for the functions listed (time officers spend writing reports, time sergeants review reports, costs incurred by the records division, and expenses for ensuring compliance with ORS' release requirements, etc.). However, ORS 809.720 (3)(c) does not specifically require such breakdown; rather, it requires the fee to be "determined by the agency" to be sufficient to recover its actual administrative costs. The Hearings Officer finds that the evidence in the record satisfies the minimum requirements of ORS 809.720(3)(c).

ORS 809.716(4) states, in part, that if a tow is found valid (statute uses the word proper), the Hearings Officer shall order that "the owner or person entitled to possession of the vehicle is liable for usual and customary towing and storage costs." Mr. Stevenson argues that the tow charges in this case (\$500) are not usual and customary towing and storage charges. Mr. Stevenson sets forth the charges for a private property impound tow (PPI) portion of PCC 16.30.520, a summary of RVS Impound Rates and the release fee charged to Mr. Stevenson.

Ms. Osoinach, on behalf of the City, "agrees with Mr. Stevenson that the Hearings Officer can use the Administrative Rule Adopted by the Revenue Bureau regarding fees for private property impound (PPI) towing and storage in the City of Portland as a measure of the usual and customary towing and storage costs. Mr. Stevenson quoted, as the PPI tow/storage charges, an amount of \$287.40 (Exhibit 24 and 26a). Ms. Osoinach used a tow/storage amount of \$277 (\$287 less \$10 PPI non-police bureau administrative fee). The Hearings Officer finds that the tow/storage amount is not in dispute. The Hearings Officer finds that the tow/storage charge meets the ORS 809.716 (4) statutory mandate.

In a related argument, Mr. Stevenson quotes a portion of PCC 16.30.520 ("the just and reasonable charges for the tow and storage services performed"). The Hearings Officer finds that Mr. Stevenson's quoted language is found in PCC 16.30.520 A. PCC 16.30.520 A authorizes a tow company to place a lien upon a towed vehicle in an amount that represents the "just and reasonable charges for the tow and storage services." The Hearings Officer finds the section that is relevant to this case is PCC 16.30.520 B. PCC 16.30.520 B describes what an owner must do before the vehicle will be released. PCC 16.30.520 B states that before a vehicle may be released, the owner must pay for "towing, storage" and also pay an "administrative fee to the police agency."

The City, through Ms. Osoinach, did not dispute the accuracy of Mr. Stevenson's "RVS Impound Rates" or "Charge Paid By Me." The Hearings Officer finds no dispute between Mr. Stevenson and the City related to the towing/storage charge.

In summary, Mr. Stevenson's arguments related to ORS 809.716(4) and ORS 809.720, as presented in his oral argument and Exhibits 24 and 26, are not persuasive. The Hearings Officer finds, as a practical matter, Mr. Stevenson is contesting the amount of the administrative fee provided for in ORS 809.720(3)(c), PCC 16.30.420, PCC 16.30.430, and PCC 16.30.520 B. The Hearings Officer finds, based upon the statement by Ms. Osoinach, that the administrative fee of \$350 does not exceed an amount necessary for the City to recover its actual administrative costs for the impoundment.

The Hearings Officer also notes that ORS 809.716(4) states that "the hearings officer may find the owner or person entitled to possession of the vehicle liable for costs of the hearing." The City Code does not provide for such cost recovery despite the statutory authorization to do so.

Mr. Stevenson raised a number of other issues in his request for hearing (Exhibit 1) and written summary (Exhibit 24). The Hearings Officer will address these issues in the order presented by Mr. Stevenson in Exhibit 24.

Oregon Constitution Article I, Section 9

Mr. Stevenson referenced "Article 9" in his written materials (Exhibit 24). Article I, Section 9 of the Oregon Constitution is titled "unreasonable searches or seizures." The Hearings Officer acknowledges that a tow of a vehicle is a seizure as contemplated by Article I, Section 9 as well as the Fourth Amendment to the United States Constitution. *Miranda v. City of Cornelius*, 429 F3d 858, 862 (9th Cir 2005)

As a general rule, a police officer may stop an automobile if the officer has reasonable suspicion that a traffic violation occurred. The Hearings Officer finds that the police officer, in this case, had probable cause to stop Mr. Stevenson's vehicle as the police officer stated he observed Mr. Stevenson's vehicle in the opposing wrong travel lane (Exhibit 8). The Hearings Officer, as discussed above, found that the police officer had probable cause to believe Mr. Stevenson had operated his vehicle in violation of ORS 813.010. Mr. Stevenson offered no evidence related to the particulars of the stop to permit the Hearings Officer to find the tow of his vehicle invalid. The Hearings Officer finds that a valid tow does not violate Article I, Section 9 of the Oregon Constitution.

Oregon Constitution Article I, Section 16

Mr. Stevenson referenced "Article 16" in his written material (Exhibit 24). Article I, Section 16 of the Oregon Constitution is titled "excessive bail and fines; cruel and unusual punishment; powers of jury in criminal case." It appears to the Hearings Officer that Mr. Stevenson's concern, with respect to Article I, Section 16, is with "excessive fines."

The Hearings Officer does not characterize the requirement to pay for the release of a vehicle that has been ordered towed by the Portland Police Bureau as a fine. As stated above, the charges imposed upon Mr. Stevenson in this case are for the towing/storage charges and an administrative fee. The Hearings Officer, above, found that the towing/storage charges and administrative fee assessed to Mr. Stevenson to permit the release of his vehicle were in accord with ORS 809.716(4) and ORS

809.720(3)(c). The Hearings Officer finds that the charges imposed upon Mr. Stevenson are directly related to the costs incurred by the towing company towing Mr. Stevenson's vehicle and the City's administrative costs.

It is possible, with a more thorough argument presented by Mr. Stevenson, that the Hearings Officer could find a meaningful legal relationship between Article I, Section 16 of the Oregon Constitution and the tow of his vehicle on December 12, 2009. The Hearings Officer provided Mr. Stevenson additional time, after the January 5, 2010 hearing, to submit in writing additional evidence and argument. The intent, as stated by the Hearings Officer at the hearing, was to have Mr. Stevenson, and the City if it so elected, an opportunity to refine and develop the arguments presented in a summary fashion by Mr. Stevenson at the January 5, 2010 hearing and in Mr. Stevenson's request for hearing (Exhibit 1). The Hearings Officer finds that Mr. Stevenson's subsequent submissions (Exhibits 24 and 26) did not develop his Article I, Section 16 of the Oregon Constitution arguments with sufficient specificity to afford the Hearings Officer to make a reasoned and informed decision. The Hearings Officer finds Mr. Stevenson's Article I, Section 16 Oregon Constitution argument is not adequately developed and therefore, is not persuasive.

Oregon Constitution Article I, Section 20

Mr. Stevenson referenced "Article 20" in his written material (Exhibit 24). Article I, Section 20 of the Oregon Constitution is titled "equality of privileges and immunities of citizens." The Hearings Officer reviewed the recording of the hearing and the written documents submitted by Mr. Stevenson (Exhibits 24 and 26) for the purpose of attempting to narrow the Article I, Section 20 Oregon Constitution argument. At the hearing, Mr. Stevenson stated that having a tow release fee of \$500 for a misdemeanor, which Mr. Stevenson indicated was related to his arrest, was "disproportionate under the Constitution" as compared to other release fees (i.e. driving while suspended release fee of \$375).

The Hearings Officer does not argue with Mr. Stevenson's assertion that the amount he was charged to obtain a release of his vehicle is different from what a person would be charged whose vehicle was towed for a different offense. It is possible that with a more thorough argument presented by Mr. Stevenson, the Hearings Officer could find a meaningful legal relationship between Article I, Section 20 of the Oregon Constitution and the tow of his vehicle on December 12, 2009. The Hearings Officer provided Mr. Stevenson additional time, after the January 5, 2010 hearing, to submit in writing additional evidence and argument. The intent, as stated by the Hearings Officer at the hearing, was to give Mr. Stevenson, and the City if it so elected, an opportunity to refine and develop the arguments presented in a summary fashion by Mr. Stevenson at the January 5, 2010 hearing and in Mr. Stevenson's request for hearing (Exhibit 1). The Hearings Officer finds that Mr. Stevenson's subsequent submissions (Exhibits 24 and 26) did not develop his Article I, Section 20 of the Oregon Constitution arguments with sufficient specificity to afford the Hearings Officer to make a reasoned and informed decision. The Hearings Officer finds Mr. Stevenson's Article I, Section 20 Oregon Constitution argument is not adequately developed and therefore, is not persuasive.

Oregon Constitution Article I, Section 33

Mr. Stevenson referenced "Article 33" in his written material (Exhibit 24). Article I, Section 33 of the Oregon Constitution is titled "enumeration of rights not exclusive." The Hearings Officer reviewed the recording of the hearing and written materials submitted by Mr. Stevenson for the purpose of ascertaining the particular legal issue raised by this case in the context of Article I, Section 33. At the

hearing, based upon the Hearings Officer's review of the recording of the hearing, Mr. Stevenson referred to Article I, Section 33 as "just a catchall."

The Hearings Officer, after reviewing the recording of the hearing and Mr. Stevenson's post-hearing submissions (Exhibits 24 and 26), is simply unable to discern an argument made by Mr. Stevenson that implicates, with particularity, Article I, Section 33.

PCC 1.01.170

PCC 1.01.170 states, "This Code shall be construed so as to render it consistent with state criminal law, and any procedures or defenses made available in the prosecution of the same or similar offenses under state criminal law shall apply in prosecutions under this Code." Mr. Stevenson, at the January 5, 2010 hearing, indicated that PCC 1.01.170 is relevant to this case because the tow of his vehicle on December 12, 2009 was based upon his allegedly violating a criminal section of the Oregon Statutes (ORS 813.010).

The Hearings Officer agrees with Mr. Stevenson that ORS 813.010 is a criminal statute in the State of Oregon. The Hearings Officer finds that PCC 16.30.220 K.4 does empower a City of Portland police officer to order a vehicle towed if the officer has probable cause to believe the vehicle operator was driving in violation of ORS 813.010. As indicated in the findings above, the Hearings Officer found the City of Portland police officer who ordered Mr. Stevenson's vehicle towed did have probable cause to believe that Mr. Stevenson drove his vehicle, on December 12, 2009, in violation of ORS 813.010. The Hearings Officer's findings, regarding the validity of the December 9, 2009 towing of Mr. Stevenson's vehicle, are also consistent with ORS 809.720. The Hearings Officer does not find the ordering of Mr. Stevenson's vehicle towed on December 12, 2009 to be inconsistent with PCC 1.01.170.

If Mr. Stevenson is asserting that the charging of \$500 before his vehicle would be released by the City of Portland is somehow inconsistent with PCC 1.01.170, the Hearings Officer could find no meaningful testimony at the January 5, 2010 hearing or in any subsequent written submission by Mr. Stevenson explaining this claim.

It is possible that with a more thorough argument presented by Mr. Stevenson, the Hearings Officer could find a relationship between PCC 1.01.170 and the tow of his vehicle on December 12, 2009. The Hearings Officer provided Mr. Stevenson additional time, after the January 5, 2010 hearing, to submit in writing additional evidence and argument. The intent, as stated by the Hearings Officer at the hearing, was to give Mr. Stevenson, and the City if it so elected, an opportunity to refine and develop the arguments presented in a summary fashion by Mr. Stevenson at the January 5, 2010 hearing and in Mr. Stevenson's request for hearing (Exhibit 1). The Hearings Officer finds that Mr. Stevenson's subsequent submissions (Exhibits 24 and 26) did not develop his PCC 1.01.170 argument with sufficient specificity to afford the Hearings Officer to make a reasoned and informed decision. The Hearings Officer finds Mr. Stevenson's PCC 1.01.170 argument is not adequately developed and therefore, is not persuasive.

United States Constitution "Equal Protection AND Due Process"

Mr. Stevenson, in his request for a hearing, referenced the "U.S. Constitution: Equal Protection AND Due Process" (Exhibit 1). Mr. Stevenson did not elaborate, to any meaningful extent, on the Equal

Protection and Due Process U.S. Constitution arguments at the January 5, 2010 hearing or in his post-hearing submissions (Exhibits 24 and 26).

It is possible that with a more thorough argument presented by Mr. Stevenson, the Hearings Officer could find a relationship between the U.S. Constitution Equal Protection and Due Process and the tow of his vehicle on December 12, 2009. The Hearings Officer provided Mr. Stevenson additional time, after the January 5, 2010 hearing, to submit in writing additional evidence and argument. The intent, as stated by the Hearings Officer at the hearing, was to give Mr. Stevenson, and the City if it so elected, an opportunity to refine and develop the arguments presented in a summary fashion by Mr. Stevenson at the January 5, 2010 hearing and in Mr. Stevenson's request for hearing (Exhibit 1). The Hearings Officer finds that Mr. Stevenson's subsequent submissions (Exhibits 24 and 26) did not develop his U. S. Constitution arguments with sufficient specificity to afford the Hearings Officer to make a reasoned and informed decision. The Hearings Officer finds Mr. Stevenson's U. S. Constitution arguments are not adequately developed and therefore, are not persuasive.

ORS 82.010

ORS 82.010 is titled "legal rate of interest, effect of violation." This section of the Oregon Statutes imposes, upon identified transactions, a nine percent per annum interest rate.

The Hearings Officer finds that ORS 82.010 does not apply in this case because the Hearings Officer determined that the tow of Mr. Stevenson's vehicle, on December 12, 2009, was valid and that the charges imposed upon Mr. Stevenson were consistent with ORS 809.716(4), ORS 809.720(3)(c), PCC 16.30.420, PCC 16.30.430, and PCC 16.30.520 B.

Conclusion

The Hearings Officer, in conclusion, finds that the tow of Mr. Stevenson's vehicle (Oregon License number WHALE) on December 12, 2009 is valid and the towing/storage charges and administrative fee required to be paid, before his vehicle was released, are consistent with sections of the Portland City Code, Oregon Statutes and Oregon Constitution referenced by Mr. Stevenson in his request for hearing (Exhibit 1).

ORDER AND DETERMINATION:

1. The tow of Mr. Stevenson's vehicle (Oregon License number WHALE) on December 12, 2009 is valid.
2. All towing and storage charges and administrative fees required of Mr. Stevenson to be paid prior to the release of his vehicle shall remain the responsibility of Mr. Stevenson.
3. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: April 5, 2010
GJF:rs/cb



Gregory J. Frank, Hearings Officer

Enclosure

Bureau: Police
Tow Number: 24728

Exhibit #	Description	Submitted by	Disposition
1	Hearing request letter	Stevenson, George	Received
2	Tow Desk printout	Hearings Office	Received
3	Hearing Notice	Hearings Office	Received
4	Tow Hearings Process Info. sheet	Hearings Office	Received
5	Towed vehicle record	Police Bureau	Rejected
6	Copy of Exh. 1 sent back to us by PPB w/reports	Police Bureau	Received
7	Custody report	Police Bureau	Received
8	Special report	Police Bureau	Received
9	Special report "Non-Connect"	Police Bureau	Received
10	Notice of Impoundment	Police Bureau	Received
11	Waiver of Probable Cause Hearing Before a Judge document	Police Bureau	Received
12	Implied Consent	Police Bureau	Rejected
13	DUII Interview Report	Police Bureau	Rejected
14	Intoxilyzer 8000 Operator Checklist	Police Bureau	Rejected
15	Breath Test Report	Police Bureau	Rejected
16	Property Evidence Receipt	Police Bureau	Rejected
17	DMV Implied Consent/Rights & Consequences on back	Police Bureau	Rejected
18	Usual and Customary Towing and Storage Costs	Stevenson, George	Received
19	ORS 82.010 Legal rate of interest	Stevenson, George	Received
20	ORS 809.716	Stevenson, George	Received
21	1.01.170 Consistency With State Law Criminal Law	Stevenson, George	Received
22	Approved Rates for Private Property Impound Towing as of July 25, 2009	Stevenson, George	Received
23	1/6/10 letter	Stevenson, George	Received
24	Letter in argument	Stevenson, George	Received
25	1/22/10 letter with attachments	Osoinach, Ellen	Received
25a	PortlandMaps printout	Osoinach, Ellen	Received
25b	LIC-9.03a - Fees for Private Property Impound (PPI) Towing and Storage in the City of Portland	Osoinach, Ellen	Received
25c	Lic-9.04 - Private Property Impound Conditions	Osoinach, Ellen	Received
26	Letter	Stevenson, George	Received
26a	"Usual and Customary Towing and Storage Costs" document	Stevenson, George	Received
27	3/22/10 letter	Stevenson, George	Received