



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

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HEARINGS OFFICER'S ORDER

APPEAL OF CAMMIE RICHEY

CASE NO. 1100062

DESCRIPTION OF VEHICLE: Honda Civic (OR YSC614)

DATE OF HEARING: April 12, 2010

APPEARANCES:

Cammie Richey, Appellant

HEARINGS OFFICER: Mr. Gregory J. Frank

Ms. Richey appeared at the hearing and testified on her own behalf. No person appeared at the hearing 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 Ms. Richey and the documents admitted into evidence (Exhibits 1 through and including 7).

Summary of Evidence:

Evidence from Appellant: Ms. Richey testified that the vehicle that was towed by the City and is the subject to this hearing (the "Subject Vehicle") had been stolen in January, 2010, by the person from whom she purchased the Subject Vehicle. Ms. Richey stated that the police recovered the Subject Vehicle and advised Ms. Richey not to keep the vehicle in the same location from which it had been stolen. Ms. Richey stated that she had recently purchased a home in a location far from her present home and she decided to park the Subject Vehicle on the public right-of-way in front of the new house. Ms. Richey stated that sometime after she parked the Subject Vehicle in front of the new house one of the tires lost air and became "flat." Ms. Richey stated that a contractor working at her new house called her and told her that a Tow Warning sticker was placed on the Subject Vehicle. Ms. Richey stated she would have moved the Subject Vehicle onto the private property at her new home, but the parking spaces were being used by remodeling contractors.

Evidence from city. The Abandoned Auto Inspector who ordered the Subject Vehicle towed on April 5, 2010 submitted Exhibits 5, 6, and 7 into the evidentiary record. Exhibit 2, a copy of the "Tow Desk" printout is obtained by the Hearings Office as a normal part of the tow appeal process.

Exhibit 5 includes a narrative prepared by the Abandoned Auto Inspector who ordered the Subject Vehicle towed. The Inspector stated:

"Vehicle was found where reported at the 4100 bl NE 137 on Friday April 2nd 2010 at 9:21 am. The Left front tire was flat which makes the vehicle inoperable. At that time I affixed a 72 hour tow warning notice on

the drivers side window for appears inoperative or disabled. When I returned to recheck the vehicle the Left front tire was still flat. At that time I cited the vehicle for tow."

Exhibit 2 indicates that the tow truck that completed the tow of the Subject Vehicle arrived at the scene at 21:30 hour on April 5, 2010 and completed the tow at 22:40 hour. Exhibit 6 includes three photographs showing the Subject Vehicle; two of which show the front left tire is flat.

Applicable Law:

The Hearings Officer must find a tow is valid if the Hearings Officer finds that 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 16.90.005 defines, for the purposes of towing a vehicle in Portland, the term "abandoned." A vehicle is deemed to be abandoned if the vehicle remains in violation for more than 24 hours and if the vehicle appears inoperative or disabled. An "abandoned" vehicle may be towed and stored at the owner's expense if the vehicle is parked in the public right-of-way. (PCC 16.30.210 A.10) A vehicle may be towed 72 hours after notice of intent to tow has been affixed to or placed on the vehicle (PCC 16.30.225 B.).

Findings of Fact and Conclusions of Law:

The Hearings Officer finds that Ms. Richey's testimony is credible, but did not relate to whether the Subject Vehicle was abandoned (PCC 16.90.005) or the adequacy of the notice of impending tow (PCC 16.30.225 B.). The Hearings Officer finds that the Subject Vehicle, on April 2, 2010, was parked on the public right-of-way and the front left tire was flat. The Hearings Officer finds that on April 2, 2010 the Subject Vehicle did appear to be inoperative or disabled. The Hearings Officer finds a Tow Warning Sticker was affixed to the Subject Vehicle on April 2, 2010 at 9:21 a.m. The Hearings Officer finds that on April 5, 2010 the front left tire remained flat. The Hearings Officer finds that the Subject Vehicle was towed between 9:30 p.m. and 10:40 p.m. on April 5, 2010. The Hearings Officer finds that the tow of the Subject Vehicle occurred more than 72 hours after the Tow Warning Sticker was placed on the Subject Vehicle.

The Hearings Officer finds that the Abandoned Auto Inspector who ordered the Subject Vehicle towed on April 5, 2010 followed the relevant laws/rules. The Hearings Officer finds the tow of the Subject Vehicle on April 5, 2010 is valid.

Order:

1. It is ordered that all towing and storage charges against the vehicle shall remain the responsibility of the vehicle's owner.
2. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: April 13, 2010

GJF:cb

Enclosure


Gregory J. Frank, Hearings Officer

Bureau: Abandoned Autos
Tow Number: 6197

Exhibit #	Description	Submitted by	Disposition
<u>1</u>	<u>Hearing request letter</u>	<u>Richey, Cammie</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 Hearings Process 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>Parking Violation and photos</u>	<u>Abandoned Autos</u>	<u>Received</u>
<u>7</u>	<u>Tow detail</u>	<u>Abandoned Autos</u>	<u>Received</u>