



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

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HEARINGS OFFICER'S ORDER

APPEAL OF PATRICIA A. DEITZ

CASE NO. 1100079

DESCRIPTION OF VEHICLE: GMC (OR D05988)

DATE OF HEARING: May 11, 2010

APPEARANCES:

Ms. Patricia Deitz, Appellant

HEARINGS OFFICER: Mr. Gregory J. Frank

Ms. Deitz appeared at the hearing and testified on her 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 Ms. Deitz and the documents admitted into evidence (Exhibits 1 through and including 10 and Exhibit 15).

Ms. Deitz testified that on May 1, 2010, at the time that her vehicle was towed (approximately 10:47 p.m.), she was home and available to pick up her vehicle from the location which it was towed. Ms. Deitz stated that if she had been called she could have been at the location of her vehicle within one-half hour, had the police simply telephoned her.

Two police reports are included in the evidentiary record (Exhibits 9 and 10). The police officer, in Exhibit 9, states (in part) that "when I arrived I observed SB [Mr. Mcmurtry – the driver of Ms. Deitz's vehicle] sitting in the driver's seat of SB vehicle. I observed that SB vehicle was parked illegally against the north curblin, facing westbound, in a no parking in this block zone." The police officer in Exhibit 10 stated, in summary, that he observed Ms. Deitz's vehicle traveling on NE 82nd "at a very high rate of speed" and "changing lanes excessively all without signals." The police officer, in Exhibit 10, also stated that he spoke with Mr. Mcmurtry (driver of Ms. Dietz's vehicle), with Mr. Mcmurtry saying that "he was driving recklessly." The police officer, in Exhibit 10, stated that Mr. Mcmurtry's speech was slurred and was unable to track conversation. The police officer, in Exhibit 10, stated that Mr. Mcmurtry told the officer that "I shouldn't be driving" because "he had been drinking."

Ms. Dietz's vehicle was towed on May 1, 2010 on the basis that Mr. Mcmurtry was driving her vehicle while under the influence of alcohol (Exhibits 3, 4, 7, 9, 10, and 15).

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 16.30.220. In relevant part,

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

The Hearings Officer finds no evidence in the record to dispute the statements made by the police officers (Exhibits 9 and 10) related to the police officer's observations of Mr. Mcmurtry's driving of Ms. Deitz's vehicle on May 1, 2010. The Hearings Officer finds that it is more likely than not that on May 1, 2010, Mr. Mcmurtry did drive Ms. Deitz's vehicle on NE 82nd at excessive speeds and did repeatedly change lanes without signaling. The Hearings Officer finds it is more likely than not that on May 1, 2010, Mr. Mcmurtry did admit to one or more police officer, following the traffic stop, that he had consumed a six-pack of beer, was driving recklessly, and shouldn't be driving because of his consumption of alcohol. The Hearings Officer finds that it is more likely than not that on May 1, 2010, following the traffic stop, Mr. Mcmurtry's speech was slurred.

The Hearings Officer finds that the police officer who ordered Ms. Deitz's vehicle towed on May 1, 2010 did have probable cause to believe that Ms. Deitz's vehicle had been driven by a person under the influence of intoxicants. The Hearings Officer finds that the location where Ms. Dietz's vehicle was parked, prior to its being towed on May 1, 2010, was an illegal parking spot. The Hearings Officer finds that PCC 16.30.220 permits a police officer, who has probable cause to believe a vehicle's operator was under the influence of intoxicants, to order a vehicle towed without prior notice to the vehicle's owner. The Hearings Officer finds notice, prior to Ms. Deitz's vehicle being towed, is not necessary/required under the Portland City Code.

The Hearings Officer finds the police officer who ordered Ms. Deitz's vehicle towed on May 1, 2010 followed all relevant laws/rules. The Hearings Officer finds the tow of Ms. Deitz's vehicle on May 1, 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: May 12, 2010
GJF:cb/rs



Gregory J. Frank, Hearings Officer

Enclosure

Bureau: Police
Tow Number: 7900

Exhibit #	Description	Submitted by	Disposition
1	Letter	Deitz, Patricia A.	Received
2	Release Agreement	Deitz, Patricia A.	Received
3	Receipt	Deitz, Patricia A.	Received
4	Tow desk printout	Hearings Office	Received
5	Hearing notice	Hearings Office	Received
6	Tow hearing info. sheet	Hearings Office	Received
7	Towed vehicle record	Police Bureau	Received
8	Custody Report by reporting Officer R. Hoesly	Police Bureau	Received
9	Continuation Report by reporting Officer R. Hoesly	Police Bureau	Received
10	Special Report (Non-Connect) by reporting Officer Jerry Cioeta	Police Bureau	Received
11	DUII Interview Report	Police Bureau	Rejected
12	Implied Consent	Police Bureau	Rejected
13	Intoxilyzer 8000 Operator's Checklist	Police Bureau	Rejected
14	Breath Test Report	Police Bureau	Rejected
15	Notice of Impoundment	Police Bureau	Received
16	Multnomah County Sheriff's Office Property/Money Ledger	Police Bureau	Rejected