



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

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HEARINGS OFFICER'S ORDER

APPEAL OF FRANK NEELY

CASE NO. 1100076

DESCRIPTION OF VEHICLE: Honda Accord (No Plates, VIN #1HGCB7277PA041919)

DATE OF HEARING: May 13, 2010

APPEARANCES:

None

HEARINGS OFFICER: Ms. Christina A. Austin-Smith

Mr. Neely did not appear at the hearing to testify on his own behalf, however, the Hearings Office did receive on May 4, 2010, a letter from Mr. Neely contesting the validity of the tow and explaining his rationale, along with a copy of his receipt from the tow company to retrieve his vehicle. No one 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 documents submitted by Mr. Neely marked as Exhibits 1 and 2, and other documents admitted into evidence, that the Hearings Officer finds relevant and credible (Exhibits 3 through and including 19).

Summary of Evidence:

In his letter, Mr. Neely states that he reported his vehicle stolen on January 18, 2010. At that time, he provided contact numbers if his car was found, to include his home, work and cell phone numbers. Mr. Neely periodically called to check on the status of his stolen vehicle and each time was told he would be called. Each time Mr. Neely verified his contact numbers at home, work and cell. Mr. Neely wrote that on April 30, 2010, when his car was found, an officer called his home number at 3:01 p.m. and left a voice mail for him to come pick up the car to avoid a tow. Mr. Neely states the officer did not call his work or cell phone numbers. Mr. Neely did not get this voicemail until 5 p.m. that day, when he returned from work, and after the car had already been towed. Mr. Neely contests the validity of this tow because he does not feel the officer made a good faith effort to contact him at the other phone numbers he repeatedly provided. Mr. Neely also states he thinks it more reasonable that at 3 p.m. an individual would be at work rather than at home. Mr. Neely states that if he had been contacted at work or on his cell phone that day, he could have come to the location of his vehicle and avoided the cost of towing and storage.

The City of Portland Police Bureau submitted documents related to the towing action. Exhibit 8 is a copy of the investigation report completed when Mr. Neely reported his car stolen on January 18, 2010. Exhibit 9 is a copy of the investigation report completed when Mr. Neely's vehicle was found by the Portland Police Bureau on April 30, 2010. Officer Ney Phothivongsa filed the report and states that at 2:43 p.m. he was called to assist with a high risk stop of a stolen vehicle at SE 6th and SE Tenino. After determining the legal owner of the vehicle, Officer

Phothivongsa writes: "I attempted to call the owner of the vehicle on both numbers listed to avoid a tow. No(sic) called me back after leaving a message. Sgts. Tow came and recovered the vehicle." The towed vehicle record (Exhibit 6) indicates the tow was ordered at 3:13 p.m.

Applicable Law:

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 16.30.210A5 permits a vehicle to be towed when in the public right-of-way and the vehicle has been reported as stolen. PCC 16.30.220F authorizes the officer to have the vehicle towed without prior notice if the officer "reasonably believes that the vehicle is stolen." Portland Police Bureau Administrative Rule 630.60 indicates a police officer may wait a reasonable time (usually 30 minutes) for the owner to come and release the vehicle after verifying proof of ownership.

Findings of Fact and Conclusions of Law:

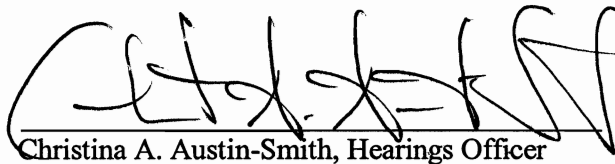
The Hearings Officer finds that on January 18, 2010, Mr. Neely reported his vehicle as stolen. The Hearings Officer also finds that on April 30, 2010, Mr. Neely's stolen vehicle was located during a traffic stop on streets within the city of Portland. The Hearings Officer finds that the officer at the scene determined the vehicle was stolen, attempted to contact Mr. Neely, and failing to contact him at two numbers, ordered the vehicle towed. There is no requirement within the Portland City Code for a police officer to notify the legal owner immediately when a stolen vehicle is located, however, the Portland Police Bureau rule does suggest an officer may wait 30 minutes for the owner. This rule as written, however, is discretionary and not required. Accordingly, the Hearings Officer finds this a valid tow in accordance with PCC 16.30.210A5 and 16.30.220F.

Order:

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: May 14, 2010
CAAS:rs



Christina A. Austin-Smith, Hearings Officer

Enclosure

Bureau: Police
Tow Number: 7815

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
1	Hearing request letter	Neely, Frank	<u>Received</u>
2	Tow Invoice	Neely, Frank	<u>Received</u>
3	Tow Desk printout	Neely, Frank	<u>Received</u>
4	Hearing Notice	Hearings Office	<u>Received</u>
5	Tow Hearings Process Info. sheet	Hearings Office	<u>Received</u>
6	Towed vehicle record	Police Bureau	<u>Received</u>
7	Data printout sheets (12 pages)	Police Bureau	<u>Received</u>
8	Investigation Report - Dunick reporting officer marked 'records copy'	Police Bureau	<u>Received</u>
9	Investigation Report - Phothivongsa reporting officer marked 'records copy' & 'Connect' at top	Police Bureau	<u>Received</u>
10	Custody Report - Sanders reporting officer marked 'records copy' (3 pages)	Police Bureau	<u>Received</u>
11	Control Copy report	Police Bureau	<u>Received</u>
12	Fingerprint page	Police Bureau	<u>Received</u>
13	Force Data Collection Report - Sanders reporting officer	Police Bureau	<u>Received</u>
14	Copy of keys	Police Bureau	<u>Received</u>
15	US Bank card front & back (2 pages) - Shane Kinn name	Police Bureau	<u>Received</u>
16	Waiver of Probable Cause Hearing document	Police Bureau	<u>Received</u>
17	Property Evidence Receipts (3 pages)	Police Bureau	<u>Received</u>
18	Copy of letter to Frank Neely from Police Bureau dated 2/2/10	Police Bureau	<u>Received</u>
19	Copy of letter to Frank Neely from Police Bureau dated 2/15/10	Police Bureau	<u>Received</u>