



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

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HEARINGS OFFICER'S ORDER

APPEAL OF JAIME MCGILL

CASE NO. 1100127

DESCRIPTION OF VEHICLE: Plymouth Voyager (OR TRF150)

DATE OF HEARING: August 19, 2010

APPEARANCES:

Ms. Jaime McGill, Appellant

HEARINGS OFFICER: Ms. Christina A. Austin-Smith

Ms. Jaime McGill appeared at the hearing and testified on behalf of Ms. Shannan Stickler, the vehicle's owner. Ms. Stickler also appeared and verbally gave her consent on the record to have Ms. McGill represent her interests at this hearing. No one appeared on behalf of TriMet. The Hearings Officer makes this decision based on substantial evidence upon the record as a whole, which includes the testimony of Ms. McGill and the documents admitted into evidence (Exhibits 1 through and including 17).

Summary of Evidence:

Ms. McGill testified that the vehicle was parked in a parking lot for Center Commons Apartments where she works. Ms. McGill testified that to her understanding this parking lot is owned by Center Commons Apartments and a permit is required to park in the lot. Ms. McGill testified that she parked in a spot that is normally used by tenants as a parking space and no signage prohibited parking in that location. Ms. McGill offered the photo at Exhibit 13 to illustrate where she was parked, indicating she was parked perpendicular to the curb and that the pavement in the forefront of the photos is the parking lot, not a city street. There is no evidence of signage prohibiting parking in that particular spot, however, there is a Permit Parking Only sign, with Retriever Towing listed as the tow, clearly visible on a post. The area where Ms. McGill indicated she parked is in front of a driveway, which leads to a grassy and gravel area next to a small building. This driveway is blocked by a wire cable strung between two posts. Ms. McGill also offered Exhibit 16, a diagram of the apartment complex, and circled in black ink on the upper right hand corner of the diagram to illustrate where this parking lot is located.

The only evidence submitted in support of the tow is submitted by TriMet at Exhibits 10 and 11. Exhibit 10 is an email notification from TriMet about a tow of a vehicle and Exhibit 11 is a TriMet incident report of the tow. Exhibit 11 indicates on August 4, 2010, at 6:01 p.m., that "sub station tech called and reported a van blocking access to the sub station at 60th Ave. A supervisor was sent and Unit 9907 radioed to have the van towed."

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 vehicle was ordered towed by TriMet, therefore pursuant to the Intergovernmental Agreement dated May of 1999, "The City will provide administrative adjudicatory hearings for all contested tows and impoundments of motor vehicles ordered by Tri-Met within the Tri-Met district." The Hearings Officer finds that this TriMet's authority to tow a vehicle is governed by TriMet Code and Administrative Rules, Chapter 30, "Regulations Governing Parking Facilities." This section defines TriMet parking facilities as: "a District-operated parking lot and park-and-ride lot and adjoining walkways." This section goes on to outline rules for violations within these facilities.

Findings of Fact and Conclusions of Law:

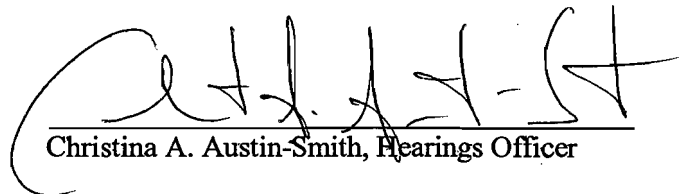
The Hearings Officer finds that Ms. McGill's vehicle, while clearly blocking the access to a MAX substation, was not located within a TriMet Parking Facility, as defined by TriMet Code, Chapter 30. The Hearings Officer finds given the facts in this case, TriMet exceeded its regulatory authority to order Ms. McGill's vehicle towed.

Order:

Therefore, the Hearings Officer finds that the owner or other persons who have an interest in the vehicle are not liable for the towing and/or storage charges. Therefore, it is ordered that the vehicle shall be immediately released, if still held, and any money heretofore paid for towing and/or storage charges shall be returned to the vehicle owner.

This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: August 21, 2010
CAAS:rs/cb



Christina A. Austin-Smith, Hearings Officer

Enclosure

Bureau: TriMet
Tow Number: 14043

If a refund has been authorized, it will be sent from the City's Accounts Payable Office. Please allow at least 6 weeks.

Exhibit #	Description	Submitted by	Disposition
1	Tow hearing request form	McGill, Jaime	Received
2	Tow desk printout	Hearings Office	Received
3	Denial letter	Hearings Office	Received
4	Tow Desk printout	Hearings Office	Received
5	Hearing Notice	Hearings Office	Received
6	Tow Hearings Process Info. sheet	Hearings Office	Received
7	Proof of Ownership Letter	Hearings Office	Received
8	Hearing request form (different from Exh. 1)	McGill, Jaime	Received
9	Tow Invoice	McGill, Jaime	Received
10	8/4/10 E-mail with hand-written notes	TriMet	Received
11	TriMet Accident/Incident Report	TriMet	Received
12	Copy of vehicle owner's ODL, insurance card & registration	McGill, Jaime	Received
13	Photo	McGill, Jaime	Received
14	Photo	McGill, Jaime	Received
15	Photo	McGill, Jaime	Received
16	Diagram of buildings	McGill, Jaime	Received
17	Business card	McGill, Jaime	Received

