

CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF BEN WALSH

CASE NO. 1110061

DESCRIPTION OF VEHICLE: Ford F350 (OR ZPF666)

DATE OF HEARING: May 24, 2011

APPEARANCES:

Mr. Ben Walsh, Appellant

HEARINGS OFFICER: Ms. Kimberly M. Graves

Mr. Ben Walsh appeared at the hearing and testified on his own behalf. 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 testimony of Mr. Walsh and the documents admitted into evidence (Exhibits 1 through, and including, 8).

Summary of Evidence:

Mr. Walsh submitted a hand-written Tow Hearing Request Form, Exhibit 1, in which he writes that he believes the tow of his vehicle was unjustified. Mr. Walsh writes that he removed the vehicle from the right-of-way after receiving the tow notice and believed that he was in compliance when he re-parked it elsewhere in the right-of-way. Mr. Walsh appeared at the hearing and provided testimony consistent with his written request. Mr. Walsh testified that that he had moved the vehicle after the notice was affixed to it and that the vehicle was towed from a different location than where it was parked when the tow notice was affixed to it. Mr. Walsh questioned the enforcement of PCC 16.20.120 as it appears to allow for the tow of virtually any truck from the public right-of-way; if the truck has been modified in any way from its original manufactured condition. Mr. Walsh testified that the truck which was towed is a work truck which he has not been using lately as a result of the poor economy.

The City submitted Exhibits 5 through, and including, 8 for the Hearings Officer's consideration. Exhibit 5 is a narrative report submitted by the Abandoned Autos section of the Office of Transportation. The report indicates that the vehicle was located on NE Rodney on the 27th of April at 8:35 a.m. The vehicle was warned for "prohibited truck (16.20.120H,I)". The writer indicates that they returned on the 2nd of May at 8:45 a.m. to "find that the truck was still parked on the street and in violation".

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 16.90.405 defines "truck" as "every motor vehicle designed, used or maintained primarily for the transportation of property, goods or providing a service... vehicle length or width or height greater than original manufacturer's vehicle dimensions. . ." PCC16.20.120H provides that it is unlawful to park a vehicle, when the vehicle is a truck, . . .in the public right-of-way adjacent to or directly across from residential, public park, church, or school property, except: when loading/unloading property belonging to the occupants of or performing a service on the adjacent residence, for a period not to exceed 8 hours; . . ." PCC 16.30.225 provides that a vehicle may be towed 72 hours after notice of intent to tow has been affixed to or placed on the vehicle if the vehicle is in violation of 16.20.120 H.

Findings of Fact and Conclusions of Law:

The burden of proof regarding the validity of the tow of Mr. Walsh's vehicle lies with the City. It is the burden of the City to provide sufficient information by which the Hearings Officer can conclude that the tow of the vehicle was proper. In addition to demonstrating that the vehicle in question is a "truck" as defined in the PCC, for a tow to be valid under PCC 16.20.120H the City must demonstrate either (1) the vehicle was in the right-of-way for a period of time exceeding 8 hours when the vehicle was being used for loading/unloading property belonging to the occupants of or performing a service on the adjacent residence, or (2) the vehicle was in the right-of-way for any period of time and was not being used for loading/unloading property belonging to the occupants of or performing a service on the adjacent residence

The Hearings Officer finds that Mr. Walsh's vehicle, which is the subject of this appeal, is a truck as defined in PCC 16.90.405. The Hearings Officer finds that on April 27, 2011 Mr. Walsh's vehicle was parked on a public right-of-way in a residential area. The Hearings Officer finds that appropriate steps were taken on April 27, 2011 to notify Mr. Walsh that his vehicle was subject to tow if it was not removed from the public right-of-way.

The Hearings Officer finds that at some time between April 27, 2011 and May 2, 2011 Mr. Walsh moved his vehicle from the location where it was parked when the tow notice was affixed. The Hearings Officer finds that on May 2, 2011, prior to towing, Mr. Walsh's vehicle was located on the public right-of-way in a different location than where it was originally observed. The Hearings Officer is unable to determine, based on the Exhibits submitted by the City, whether Mr. Walsh's vehicle was parked on the public right-of-way for greater than 8 hours prior to towing. Additionally, the Hearings Officer is unable to determine, based on the Exhibits submitted by the City, whether Mr. Walsh's vehicle was being used for loading/unloading or servicing an adjacent residence prior to towing. If the vehicle had been located on May 2, 2011 in the same location as when it was notified of the City's intent to tow, the conclusion could have been drawn that the vehicle had been on the public right-of-way for greater than 8 hours and/or at a time when it was not being used for loading/unloading or servicing an adjacent residence. However, because the vehicle was not located on May 2, 2011 in the same location as when it was originally observed on April 27, 2011, it cannot be concluded that the vehicle had been on the right-of-way for greater than 8 hours or that the vehicle was not being used for loading/unloading or servicing an adjacent residence; to draw such a conclusion is to render Mr. Walsh's vehicle unusable. If the City is not required to provide proof of how the vehicle was being used or how long the vehicle was on the public right-of-way prior to towing, Mr. Walsh would never be able to park his vehicle on the right-of-way for work purposes without placing his vehicle at risk of being towed.

The Hearings Officer finds that the City has failed to meet their burden of proof. The Hearings Officer finds the tow of Mr. Walsh's vehicle to be invalid.

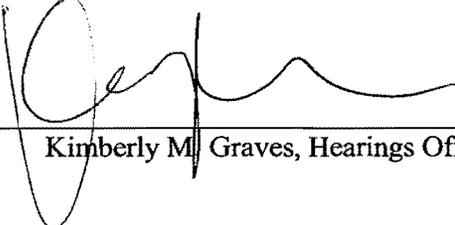
Order:

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.

In order for the appellant to receive reimbursement, a complete and legible copy of the towing and storage bill must be furnished to the Hearings Officer by June 27, 2011.

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

Dated: May 27, 2011
KMG:jeg



Kimberly M. Graves, Hearings Officer

Enclosure

Bureau: Abandoned Autos
Tow Number: 8003

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	Tow Hearing Request Form	Walsh, Ben	Received
2	Tow Desk printout	Hearings Office	Received
3	Hearing Notice	Hearings Office	Received
4	Statement of Rights and Procedures	Hearings Office	Received
5	Tow Hearing Report	Abandoned Autos	Received
6	Photos	Abandoned Autos	Received
7	Parking Violation	Abandoned Autos	Received
8	Case printout	Abandoned Autos	Received