



CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF HENRY M. ORTEGA

CASE NO. 1110066

DESCRIPTION OF VEHICLE: Schwinn Moped (VIN # LD5TCBPA251001038)

DATE OF HEARING: May 26, 2011

APPEARANCES:

Mr. Henry Ortega, Appellant

HEARINGS OFFICER: Ms. Kimberly M. Graves

Mr. Ortega 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. Ortega and the documents admitted into evidence (Exhibits 1 through and including 10).

Summary of Evidence:

Mr. Ortega submitted a hand-written Tow Hearing Request Form, Exhibit 1, for the Hearings Officer's consideration. Mr. Ortega writes "The vehicle was parked in the location in question and possibly wrecked (hit and run) by a car. At the time of the incident I was out of town for work and the parking officer considered the vehicle to be abandoned although she found it wrecked on the floor and took pictures of it. She then ordered the tow when a police report of the wreckage should have been filed." Mr. Ortega also indicates that he has concerns about the actions of the tow company.

Mr. Ortega appeared at the hearing and testified that the vehicle had been parked at the location from which it was towed for approximately 3-4 weeks. Mr. Ortega testified that the vehicle had a mechanical problem and was not drivable, but that he would check on the vehicle periodically. Mr. Ortega testified that he believes he last checked on the vehicle on May 1, 2011 and found it to be undamaged. Mr. Ortega stated that he went out of town after checking on the vehicle. Mr. Ortega stated that he was back in town by May 11, 2011 and on May 14, 2011 he received the letter indicating that his vehicle had been towed. Mr. Ortega testified that he went immediately to pick up his vehicle. At the tow yard, Mr. Ortega testified, that he was not allowed to see his vehicle prior to paying the fees to recover it. Mr. Ortega indicated that he believes he should have been able to see the vehicle prior to paying any fees.

The City submitted Exhibits 7 through, and including, 10 for the Hearings Officer's consideration. Exhibit 7 is a Tow Hearing Report submitted by the Abandoned Auto Section. The report indicates that on May 3, 2011 Mr.

Ortega's "moped" was found on the 10700 block of SW 49th at 8:45 a.m. The moped was on its side on the street. Parts of it were smashed and pieces were all over the street (see photos in Exhibit 10). A 72 hours Notice was placed on the vehicle indicating that it appears wrecked, disabled or inoperable. On May 9, 2011 the writer indicates that they returned to find that the moped was upright, but remained in the same location. The moped was then cited for towing.

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 does not have a lawfully affixed, unexpired registration plate, or fails to display current registration or 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:

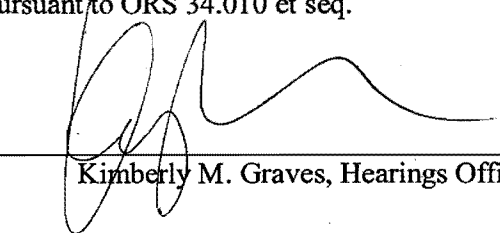
The Hearings Officer finds that SW 49th is a public right-of-way. The Hearings Officer finds that on May 3, 2011 Mr. Ortega's vehicle was parked on the public right-of-way and appeared to be wrecked, disabled or inoperable. The Hearings Officer finds that on May 3, 2011 notice was properly affixed to Mr. Ortega's vehicle indicating that the vehicle was subject to tow if not removed from the public right-of-way. The Hearings Officer finds that on May 9, 2011, greater than 72 hours after notice of intent to tow was affixed to the vehicle, Mr. Ortega's vehicle remained on the public right-of-way in the same condition as on May 3, 2011. The Hearings Officer finds that the tow of Mr. Ortega's vehicle is valid.

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 27, 2011
KMG:rs/jeg



Kimberly M. Graves, Hearings Officer

Enclosure

Bureau: Abandoned Autos
Tow Number: 8430

| Exhibit # | Description | Submitted by | Disposition |
|-----------|-------------------------------|------------------|-------------|
| 1 | Tow Hearing Request Form | Ortega, Henry M. | Received |
| 2 | Retriever Towing receipt copy | Ortega, Henry M. | Received |
| 3 | Towed Vehicle Notice | Ortega, Henry M. | Received |

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|----|------------------------------------|-----------------|----------|
| 4 | Tow Desk printout | Hearings Office | Received |
| 5 | Hearing Notice | Hearings Office | Received |
| 6 | Statement of Rights and Procedures | Hearings Office | Received |
| 7 | Tow Hearing Report | Abandoned Autos | Received |
| 8 | Tow Detail | Abandoned Autos | Received |
| 9 | Parking Violation | Abandoned Autos | Received |
| 10 | Photos | Abandoned Autos | Received |