



CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

1900 SW 4th Avenue, Room 3100

Portland, OR 97201

phone: (503) 823-7307 - fax: (503) 823-4347

web: www.portlandoregon.gov/auditor/hearings



HEARINGS OFFICER'S ORDER

APPEAL OF NICOLE YOUNG

CASE NO. 1110071

DESCRIPTION OF VEHICLE: Honda Accord (OR ZKT958)

DATE OF HEARING: June 9, 2011

APPEARANCES:

Mr. Demar Hagger, on behalf of Appellant

HEARINGS OFFICER: Ms. Kimberly M. Graves

Mr. Hagger appeared at the hearing and testified on behalf of Ms. Young. 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. Hagger and the documents admitted into evidence (Exhibits 1 through and including 10).

Summary of Evidence:

Ms. Young submitted a Tow Hearing Request Form, Exhibit 1, in which she writes "Individual (Demar Hagger)" that was driving vehicle at the time of tow was not aware that his ODL was suspended. He had obtained insurance with an SR22 filing prior to the date of suspension." In her Request Form, Ms. Young authorizes Mr. Hagger to represent her at the hearing. Mr. Hagger appeared at the hearing and testified that he did have valid insurance, but because the insurance company did not submit the information to the DMV in time, his license was suspended. Mr. Hagger was asked about the location in which the vehicle was stopped and testified that the vehicle was stopped on I-205, but that it was completely off the roadway. Mr. Hagger testified that he was the only person in the vehicle, but that he could have called someone to pick it up.

The City submitted Exhibits 5 through, and including, 10 regarding the tow of Ms. Young's vehicle. Exhibit 7 is a Custody Report completed by Officer Wolf. The report indicates that on May 18, 2011 at 11:04 p.m., Officer Wolf responded to assist Officer Fritz who was conducting a traffic stop on I-205 over SE Foster Boulevard. Officer Wolf writes that the driver, Demar Hagger, had an outstanding arrest warrant. Officer Wolf writes that Mr. Hagger was taken into custody. Exhibit 3 is a Traffic Violation Tow Report written by Officer Fritz. The report indicates that Mr. Hagger was stopped for violating the speed limit and that Mr. Hagger did not have valid driving privileges. The narrative portion of the report reads, "Towed pursuant to bureau policy as hazard & SB/only occupant." Exhibit 9 is a Notice of Tow completed by the officer indicating that the vehicle was towed because it was a hazard.

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. The specific sections of PCC Title 16 that are relevant to this case are found in PCC 16.20.130J, PCC 16.30.210 A.2, A 9 and PCC 16.30.220 D and H. PCC 16.20.130 J 1 states that it is unlawful to park or stop a vehicle on a shoulder unless a clear and unobstructed traffic lane of the roadway adjacent to the vehicle is left for the passage of other vehicles, and the stopped or parked vehicle is visible from a distance of 200 feet in each direction upon the roadway. PCC 16.30.210 A.2 states that a vehicle may be towed and held at the expense of the owner or person entitled to possession thereof if the vehicle is in the public right-of-way and the vehicle is parked/stopped unlawfully in a manner that may be hazardous to traffic. PCC 16.30.210 A 9 states that a vehicle may be towed and held at the expense of the owner or person entitled to possession thereof if the vehicle is parked in violation of any parking regulation. PCC 16.30.220 H permits a police officer to order a vehicle towed, without prior notice, if the vehicle was in possession of a person taken into custody by a law enforcement officer and no other reasonable disposition of the vehicle is available.

Findings of Fact and Conclusions of Law:

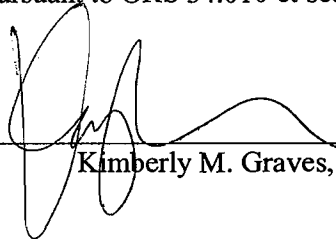
The Hearings Officer finds that on May 18, 2011 at approximately 11:00 p.m., Mr. Hagger was driving Ms. Young's vehicle when he received a signal to stop from a police officer. Mr. Hagger stopped the vehicle on Interstate 205 near SE Foster Road. The Hearings Officer finds that a vehicle stopped next to the interstate after dark would not be visible from a distance of 200 feet in each direction, and would therefore be parked in violation of a parking regulation. The Hearings Officer finds a vehicle parked next to the interstate is a hazard to other traffic. The Hearings Officer finds that as a result of Mr. Hagger's arrest, no one was available to remove the vehicle from the location in which it was stopped and no other reasonable disposition of Ms. Young's vehicle was available based on the time of night which the stop occurred and the location in which the stop occurred. The Hearings Officer finds that the tow of Ms. Young'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: June 10, 2011
KMG:rs



Kimberly M. Graves, Hearings Officer

Enclosure

Bureau: Police
Tow Number: 8980

Exhibit #	Description	Submitted by	Disposition
1	Tow Hearing Request Form	Young, Nicole	Received
2	Tow Desk printout	Hearings Office	Received
3	Hearing Notice	Hearings Office	Received
4	Notice of Rights and Procedures	Hearings Office	Received
5	Towed Vehicle Record	Police Records	Received
6	Vehicle Release	Police Records	Received
7	Custody Report	Police Records	Received
8	Traffic Violation Tow Report	Police Records	Received
9	Notice of Tow	Police Records	Received
10	OR Uniform Citation and Complaint	Police Records	Received