

# CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

## Hearings Office

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## HEARINGS OFFICER'S ORDER

### APPEAL OF RETRIEVER TOWING

CASE NO. 3120211

HEARINGS OFFICER: Mr. Gregory J. Frank

### FINDINGS OF FACT AND CONCLUSIONS OF LAW:

#### Background:

A request for an appeal hearing was received from Retriever Towing ("Retriever") by the Hearings Office on April 12, 2012 (Exhibit 3). Additional documents were also submitted to the Hearings Office related to the requested hearing (Exhibits 1, 2 and 6, through and including, 40). The Hearings Officer considered Exhibits 3, 5 and 31 in making this decision.

Mr. Charles White ("White"), Retriever Manager, indicated (Exhibit 3) that in September 2010 a "variance" had been granted by the City of Portland to Retriever permitting involuntary towing from real property located at S.E. 12<sup>th</sup> Avenue and SE Hawthorne Street ("W.L. May Property"). The variance related to signage located at the W.L. May Property parking lot. White indicated that on or about February 2012, Ms. Kathleen Butler "over ruled" the signage variance (Exhibits 3 and 5).

White stated, in part, the following (Exhibit 3):

"I asked Kathleen what the heck was going on, first you tell me there is no variance in the rule which there is and now, you tell me you don't have to even allow me the opportunity to appeal. I asked her am I going to have the right or not after being told I could or not? She said she was going to suggest to the hearings officer that I not even be heard. At that point I said 'I'm going to suggest that I am heard.'

Kathleen was totally out of line. I may not totally agree with everything Marian has decided in the past but, I have always been heard and she always allowed me to appeal if I wished. Everyone is entitled to their day in court! I'm requesting mine!!! I'm obviously no lawyer but, this sounds unconstitutional not to mention not even being allowed to be heard which, is censorship

at its best. I have a right to be heard whether anyone agrees with my appeal or not. I most certain Kathleen is out side of her jurisdiction on this hearing of appeals request. . .

Once again, I would ask that the decision of Kathleen Butler be over ruled and, towing resume.

Thank you for your time and consideration of this appeal."

Ms. Marian Gaylord ("Gaylord"), Towing Coordinator, communicated with White, via email, on March 15, 2012 (Exhibit 5). In part, Gaylord stated the following (Exhibit 5):

"Despite the sign variance granted by me for this location in September, 2010, Ms. Butler ruled that the markings in this lot are not adequate. . .

While the requirement for additional signage is not specified in the code as appealable to Code Hearings, if you wish to make a hearing request, please be sure to submit it by **March 30, 2012**. A determination can be made at that time about whether such an appeal is possible."

Butler, in Exhibit 31, stated (in part) the following:

"Mr. White is appealing the rescinding of a prior variance to duly authorized sign requirements at private parking lot. The variance, granted in September 2010, allowed for painted signs on the ground of a parking lot as a substitute for signs at eye level. Retriever Towing performs involuntary private property impound tows at the subject lot. As a result of a complaint about an involuntary tow that occurred at this lot, the variance was reviewed and found by me to be insufficiently equivalent to the specific signage requirements in Administrative Rule LIC 9.02, as authorized by PCC 7.24.010."

Butler, in Exhibit 31, quoted PCC 7.24.019 A. which states:

"Any towing firm whose application for initial PPI (Private Property Impound) permit registration or renewal of PPI permit registration has been denied, or whose permit has been revoked or suspended, or who has been directed by the Director or director's designee to pay a civil penalty or refund, may appeal such action of the Director or director's designee by submitting a written request for a hearing before the Code Hearings Officer of the City of Portland, within 10 business days of receiving the Director's written findings, as set out in Chapter 22.10."

Butler, in Exhibit 31, also stated (in part) the following:

"In this case, no registration or renewal has been denied, revoked or suspended nor has there been any civil penalty or refund assessed."

PCC 22.10.020 B. states:

"B. No person shall have a right of appeal to the Code Hearings Officer unless the right of appeal is expressly provided for in this Code."

**Analysis:**

The Hearings Officer finds, per PCC 22.10.020 B., that the City of Portland Code Hearings Officer only has the right (jurisdiction) to hear cases where such right is expressly granted by the Portland City Code. The Hearings Officer finds that White's appeal (Exhibit 3) contests Butler's decision to rescind a signage variance, previously granted by Gaylord on behalf of the City, at the W.L. May Property.

The Hearings Officer finds that PPI firms, such as Retriever, have the right to appeal to the Hearings Officer under the following limited circumstances:

- Where a towing firm's application for PPI permit is denied, or
- Where a towing firm's PPI permit has been revoked or suspended, or
- When a towing firm has been assessed a civil penalty or ordered to refund money by an authorized Revenue Bureau employee.

The Hearings Officer agrees with Butler that, in this case, Retriever is appealing a Revenue Bureau decision to rescind a signage variance. The Hearings Officer agrees with Butler that, in this case, the Revenue Bureau decision to rescind a signage variance does not fall within the circumstances described in PCC 7.24.019 A. The Hearings Officer finds that Retriever's appeal of the Revenue Bureau's rescission of the signage variance at the W.L. May Property is not within the jurisdiction of the City of Portland Code Hearings Officer. The Hearings Officer, therefore, denies Retriever's appeal request to the City of Portland Hearings Officer as set forth in Exhibit 3.

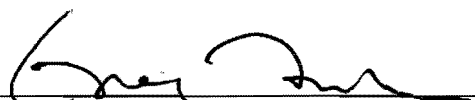
The Hearings Officer notes that Retriever has a right to appeal this decision under ORS 34.

**ORDER:**

1. Retriever's request for an appeal hearing, as set forth in Exhibit 3, is denied.
2. This Order has been mailed to the parties on April 25, 2012.
3. This Order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: April 25, 2012

GJF:jeg

  
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Gregory J. Frank, Hearings Officer

## Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Appeal form page 1	Butler, Kathleen	
2	Appeal form page 2	Butler, Kathleen	
3	3/29/12 letter from Charles White, Manager	Butler, Kathleen	Received
4	3/22/12 letter from Sharman Stuart, WL May Co.	Butler, Kathleen	
5	3/15/12 E-mail letter, Marian Gaylord to Chuck White/Terry Hall	Butler, Kathleen	Received
6	E-mails	Butler, Kathleen	
7	E-mails	Butler, Kathleen	
8	E-mails	Butler, Kathleen	
9	E-mails	Butler, Kathleen	
10	Photo	Butler, Kathleen	
11	Photo	Butler, Kathleen	
12	Photo	Butler, Kathleen	
13	Photo	Butler, Kathleen	
14	Photo	Butler, Kathleen	
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25	Photo	Butler, Kathleen	
26	Photo	Butler, Kathleen	
27	Photo	Butler, Kathleen	
28	Photo	Butler, Kathleen	
29	Photo	Butler, Kathleen	
30	Photo	Butler, Kathleen	
31	4/11/12 Staff Report	Butler, Kathleen	Received
32	E-mails	Butler, Kathleen	
33	LIC-9.02 - Private Property Impound Towing Regulations	Butler, Kathleen	
34	Photo	Butler, Kathleen	
35	Tow receipts	Butler, Kathleen	
36	2/7/12 E-mail letter, Jenny Farres to Retriever Towing	Butler, Kathleen	
37	2/29/12 E-mail letter, Gaylord to Kyle Allred	Butler, Kathleen	
38	Tow Desk printout	Butler, Kathleen	
39	9/20/10 E-mail letter, Gaylord to Russell Hickey	Butler, Kathleen	
40	3/15/12 E-mail letter to Chuck White/Terry Hall	Butler, Kathleen	
41	Mailing List	Hearings Office	