

# CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

## Hearings Office

1900 SW 4<sup>th</sup> Avenue, Room 3100

Portland, OR 97201

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

web: [www.portlandoregon.gov/auditor/hearings](http://www.portlandoregon.gov/auditor/hearings)



## HEARINGS OFFICER'S ORDER

APPEAL OF Renee Giroux

CASE NO. 1120080

DESCRIPTION OF VEHICLE: Jeep Grand Cherokee (OR 095EZG)

DATE OF HEARING: May 22, 2012

APPEARANCES:

None

HEARINGS OFFICER: Mr. Gregory J. Frank

### FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Ms. Giroux ("Giroux") submitted a request for a tow appeal hearing (Exhibit 1). A Notice of Hearing was sent to Giroux on May 8, 2012. (Exhibit 3) Giroux requested the hearing date/time be rescheduled after May 18, 2012 and on a Monday or Tuesday. (Exhibit 8) The hearing was rescheduled to May 22, 2012 at 4:00 p.m. (Exhibit 9). Giroux did not contact the Hearings Office, after the date the hearing was rescheduled, either in writing or by telephone. Giroux did not appear at the May 22, 2012 hearing. No person appeared at the hearing to testify on behalf of the City. The Hearings Officer makes this decision based upon the documents admitted into the evidentiary record (Exhibits 1 through and including 9).

The Hearings Officer must find a tow valid if the Hearings Officer finds that the person ordering the tow followed the relevant laws/rules. In this case the relevant laws/rules are 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 16.20.130 V, PCC 16.30.220B and PCC 16.90.105.

PCC 16.20.130 V states that it is unlawful to park or stop a vehicle in front of any portion of a driveway ingress/egress to the public right-of-way. PCC 16.90.105 defines a "driveway" for the purposes of Title 16. In summary, PCC 16.90.105 defines a "driveway" as an access extending from a public right-of-way onto private or public lands for the purpose of gaining vehicular access to such areas and reasonably designated at the property line so as to be an obvious open for access. For the purposes of enforcement a driveway extends from one curb return to the other and if winged, includes the wings. PCC 16.30.220 B permits a vehicle to be towed without prior notice and stored, at the owner's expense, in a location where parking is prohibited.

Giroux, in her written request for a tow hearing (Exhibit 1) stated the following:

"My parking citation HA10686769 has 4 photos at the court house. When I parked I got out and looked from the street side to ascertain my car cleared their driveway. I agree after viewing the photos that I used poor judgement

but I feel this was abuse of discretion on the officers part to allow a towing company to tow my car and an over reaction to the home owners complaint. When you view the photos you will see it was not actually 'blocking' the driveway at all, only legally so. I did not know the rule of 3' from the apron."

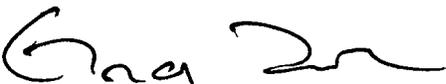
The City of Portland Parking Enforcement Officer who ordered Giroux's vehicle towed on March 20, 2012 submitted various documents into the evidentiary record (Exhibits 5, 6 and 7). In summary, Exhibit 5 contains a written statement by the Parking Enforcement Officer. This statement indicates that Giroux's vehicle was parked within a driveway as driveway is defined in the PCC. Exhibit 7 contains four photographs. The photos, on Exhibit 7, show a white vehicle (Oregon license 095 EZG) parked with a back wheel adjacent to the end of the curb return or wing. The photos show the portion of the white vehicle behind the rear wheel to be parked within the driveway as defined by PCC 16.90.105.

The Hearings Officer finds that Giroux's statement (Exhibit 1) includes an admission that her vehicle was within the legal definition of a driveway. The Hearings Officer finds that the statements by the Parking Enforcement Officer indicate that Giroux's vehicle was parked partially within a driveway. The Hearings Officer finds that the photos on Exhibit 7 support Giroux's admission and the Parking Enforcement Officer's statement that the Giroux vehicle was parked partially within a driveway. The Hearings Officer finds that it is more probable than not that on March 20, 2012, the Giroux vehicle was parked in violation of PCC 16.20.130 V. The Hearings Officer finds that the Parking Patrol Officer followed all relevant laws/rules when ordering the Giroux vehicle towed on March 20, 2012. The Hearings Officer finds the City of Portland ordered tow of the Giroux vehicle on March 20, 2012 is valid.

**ORDER:**

1. The City of Portland ordered tow of the Giroux vehicle (Jeep Grand Cherokee – Oregon license 095 EZG) on March 20, 2012 is valid.
2. All towing and storage charges against the vehicle shall remain the responsibility of the vehicle's owner.
3. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: May 23, 2012  
GJF:C2/c1

  
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Gregory J. Frank, Hearings Officer

Enclosure

Bureau: Parking Enforcement  
Tow Number: 4737

Exhibit #	Description	Submitted by	Disposition
1	Tow Hearing Request Form	Giroux, Renee	Received
2	Tow Desk printout	Hearings Office	Received
3	Notice of Hearing	Giroux, Renee	Received
4	Statement of Rights and Procedures	Hearings Office	Received
5	Tow Hearing Report	Parking Enforcement	Received
6	Parking Violation #HA10686769	Parking Enforcement	Received
7	Photos	Parking Enforcement	Received
8	Request to Reschedule Form	Giroux, Renee	Received
9	Notice of Hearing	Hearings Office	Received