

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 IRA ERENO

CASE NO. 1120125

DESCRIPTION OF VEHICLE: BMW 528 (OR XTE450)

DATE OF HEARING: July 12, 2012

APPEARANCES:

Ms. Ira Ereno, Appellant

HEARINGS OFFICER: Ms. Kimberly M. Graves

Ms. Ereno appeared at the hearing and testified on her 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 Ms. Ereno and the documents admitted into evidence (Exhibits 1 through and including 14).

Summary of Evidence:

Ms. Ereno submitted a Tow Hearing Request Form, Exhibit 1, regarding the tow of her vehicle on June 30, 2012. Ms. Ereno writes in the form that the citation she received says that her vehicle was parked 3 feet away from the curb, but that she believes that her vehicle was parked properly and was not a hazard. Ms. Ereno attached a second document, Exhibit 2, with her request form. Exhibit 2 contains a black and white copy of a photograph which is indistinguishable due to the quality of the copy. On the lower portion of Exhibit 2 Ms. Ereno has written that her neighbors will confirm that her vehicle was not parked improperly or hazardedly. Ms. Ereno appeared at the hearing and submitted 4 additional exhibits for the Hearings Officer's consideration. Exhibit 11 is a handwritten letter from "Alexis Deana" indicating that Ms. Ereno's vehicle was "parked properly" when it was towed. Exhibit 12 is a copy of the Parking Violation issued to Ms. Ereno when her vehicle was towed. Exhibit 13 is a color copy of Exhibit 2 in which the photo can be clearly seen. Exhibit 14 is a copy of Ms. Ereno's receipt from retrieving her vehicle. Ms. Ereno testified that her vehicle was parked in front of the red truck seen in Exhibit 2. Ms. Ereno testified that she had used her vehicle around 9:30 p.m. on June 30, 2012 and that between 9:30 p.m. and when her vehicle was towed, her boyfriend, Mr. Enyinwa used her vehicle. Ms. Ereno testified that Mr. Enyinwa parked the vehicle, upon returning home, near her townhouse. Ms. Ereno testified that she was in her home when the police arrived, but that she came outside before her vehicle was towed. Ms. Ereno testified that she was outside before her vehicle was attached to the tow truck, and saw that her vehicle was properly parked.

The City submitted Exhibits 6 through, and including, 10 regarding the tow of Ms. Ereno's vehicle. Exhibit 6 is a Towed Vehicle Record indicating that Ms. Ereno's vehicle was towed because it was a hazard. Exhibit 7 is a three page LEDS report for Ms. Ereno. Exhibit 8 is an Investigation Report which contains information about the tow of Ms. Ereno's vehicle. The primary purpose of the Investigation Report is to document criminal conduct related to a road rage/vandalism case. Ms. Ereno's vehicle was identified as the suspect vehicle in the road rage/vandalism incident, and it was during the investigation of said incident that Ms. Ereno's vehicle was towed. On page 3 of the Investigation Report, the officer writes, "I noticed that the vehicle was parked on the west side of the street, facing Northbound. The vehicle was facing the wrong way on the street. The vehicle was also parked about 3 feet off the curb line of SE 125th Ct. . . . since the vehicle was parked so far from the curb line, I believed that anybody driving Northbound would have trouble manoeuvring (sic) around the suspect vehicle. The suspect vehicle was an obvious hazard." Later in the report, the officer writes "when the tow truck arrived and began hooking up the vehicle, (KN) Ereno came out of the house." Exhibits 9 and 10 relate to the criminal investigation and do not address the tow of Ms. Ereno's vehicle.

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 16.20.120 Q, PCC 16.30.210 A.2 and PCC 16.30.220 A and D. PCC 16.20.120 Q states that it is unlawful to park or stop a vehicle in a manner that creates a traffic hazard impeding the safe movement of vehicular or pedestrian traffic. 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 16.30.220 A authorizes a police officer to order a vehicle towed, without prior notice, if the vehicle is impeding or likely to impede the normal flow of vehicular traffic. PCC 16.30.220 D permits a police officer to order a vehicle towed, without prior notice, if the vehicle poses an immediate danger to public safety.

Findings of Fact and Conclusions of Law:

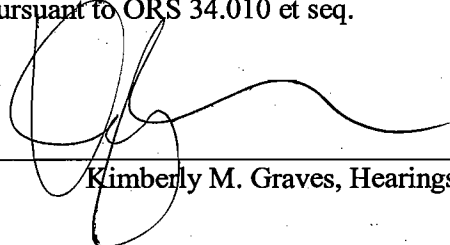
The Hearings Officer finds that on June 30, 2012, Ms. Ereno's vehicle was parked on SE 125th Court. The Hearings Officer finds that Ms. Ereno's vehicle was towed from SE 125th Court because it was identified as a hazard by a police officer. The Hearings Officer finds that Ms. Ereno was present at the time that her vehicle was towed, and no reason is identified in the officer's report as to why Ms. Ereno was not permitted to move her vehicle to alleviate any hazard. The Hearings Officer finds Ms. Ereno's testimony to be credible about how her vehicle was parked prior to towing. The Hearings Officer finds that absent photographic evidence of how the vehicle was parked prior to towing, the City has failed to meet its burden to provide a preponderance of the evidence to support the validity of the tow. The Hearings Officer finds the tow of Ms. Ereno's vehicle is not valid.

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.

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

Dated: July 13, 2012
KMG:c1



Kimberly M. Graves, Hearings Officer

Enclosure

Bureau: Police
Tow Number: 10364

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 | Ereno, Ira | Received |
| 2 | Photo + Description | Ereno, Ira | Received |
| 3 | Tow Desk printout | Hearings Office | Received |
| 4 | Notice of Hearing | Hearings Office | Received |
| 5 | Statement of Rights | Hearings Office | Received |
| 6 | Towed Vehicle Record | Police Records | Received |
| 7 | Police Computer printout | Police Records | Received |
| 8 | PPB Investigation Report 12-056774 | Police Records | Received |
| 9 | PPB Custody Report 12-056774 | Police Records | Received |
| 10 | PPB Special Report: 12-056774 | Police Records | Received |
| 11 | Letter 7/10/12 | Ereno, Ira | Received |
| 12 | Parking Violation | Ereno, Ira | Received |
| 13 | Photo and description | Ereno, Ira | Received |
| 14 | A& B Towing Receipt | Ereno, Ira | Received |