

CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF TIMOTHY R. WALBRIDGE

CASE NO. 1120134

DESCRIPTION OF VEHICLE: Audi A4 (OR 906 FTV)

DATE OF HEARING: July 26, 2012

APPEARANCES:

Appellant did not appear

Mr. Rich Oberdorfer, attorney for Mr. Walbridge

No one appeared on behalf of the City

HEARINGS OFFICER: Ms. Kimberly M. Graves

Mr. Walbridge did not appear at the hearing. Mr. Oberdorfer, attorney for Mr. Walbridge, appeared on behalf of his client. 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 documents admitted into evidence (Exhibits 1 through and including 8), and the argument of Mr. Oberdorfer.

Summary of Evidence:

Mr. Walbridge submitted a Tow Hearing Request Form, Exhibit 1, regarding the tow of his vehicle on July 21, 2012. Mr. Walbridge indicates that he believes the tow of his vehicle is invalid because "Appellant raises all issues; including without limitation the lawfulness of the tow pursuant to Ch. 16 of the Portland City Code & *Miranda v. City of Cornelius*, 429 F3d 858 (9th Cir 2005)." Mr. Walbridge did not provide any factual information regarding the circumstances surrounding the tow of his vehicle. Mr. Walbridge did not provide any other information about the tow of his vehicle. Mr. Oberdorfer appeared at the hearing and indicated that he had not had the opportunity to review all of the reports in the matter prior to the hearing. Mr. Oberdorfer asked the Hearings Officer to review the records to determine whether a prima facie case exists to validate the tow of the vehicle, and whether the requirements set out in *Miranda* (see above) were met.

The City submitted Exhibits 5 through, and including, 8 for the Hearings Officer's consideration. Exhibit 5 is a Towed Vehicle Record indicating that Mr. Walbridge's vehicle was towed because it was a hazard. Exhibit 6 is a

printout of Mr. Walbridge's vehicle information. Exhibit 7 is a Traffic Crash Report indicating that on July 21, 2012, Mr. Walbridge's vehicle was involved in a collision on southbound I-405. Exhibit 8 is a Special Report from Portland Police Officer Kyle Hefley. The report indicates that on July 21, 2012, the officer responded to collision involving a vehicle striking a guardrail. The report indicates that the driver of the vehicle had fled the scene. The report, on page 2, reads, "Upon arrival I observed (A) sideways on the freeway blocking two lanes of traffic. (A) had significant damage and appeared to be totalled (sic)." The report identifies "(A)" as Mr. Walbridge's vehicle. The bottom of page 2 reads, "(A) was towed by retriever towing to their log. I issued a citation for a traffic hazard on parking cite U263487."

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.

In *Miranda v. City of Cornelius*, the 9th Circuit reviewed the validity of a city ordinance that permitted an officer to tow a vehicle, without prior notice, if the officer had a reasonable belief that the driver was operating the vehicle without a license. The ordinance was challenged as an unreasonable seizure in violation of the Fourth Amendment. The Court concluded that probable cause was a standard peculiar to criminal investigations, not routine non-criminal procedures. As such, the Court stated that "the police's authority to search and seize property when acting in its role as 'community caretaker' has a different source than its authority to search and seize property to investigate criminal activity." The court concluded that when in their "community caretaking" function, police officers may impound vehicles that "jeopardize public safety and the efficient movement of vehicular traffic." The Court continued that the validity of impoundment in such cases turns "on the location of the vehicle and the police officers' duty to prevent it from creating a hazard to other drivers or being a target for vandalism or theft."

Findings of Fact and Conclusions of Law:

The Hearings Officer finds that Mr. Walbridge did not provide any information to contradict the report submitted by the Portland Police regarding the tow of his vehicle. The Hearings Officer finds the report from Officer Hefley to be credible and to accurately reflect the location and condition of Mr. Walbridge's vehicle prior to towing. The Hearings Officer finds that on July 21, 2012 Mr. Walbridge's vehicle was stopped on I-405 in a manner which impeded the movement of vehicular traffic and created a danger to public safety. The Hearings Officer finds that Mr. Walbridge was unavailable to move the vehicle from the roadway to alleviate the impediment and public safety risk. The Hearings Officer finds that the officer was acting within the confines of *Miranda v. City of Cornelius* when he ordered the vehicle towed to alleviate the traffic impediment and hazard. The Hearings Officer finds the tow of Mr. Walbridge's vehicle is valid.

Order:

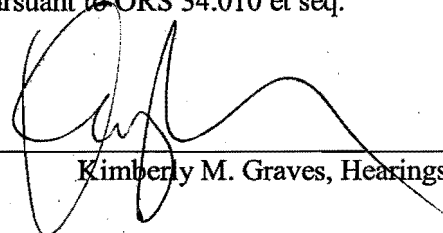
Therefore, it is ordered that all towing and storage charges against the vehicle shall remain the responsibility of the vehicle's owner.

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

Dated: July 31, 2012

KMG:c2/c1

Enclosure



Kimberly M. Graves, Hearings Officer

Bureau: Police
Tow Number: 11430

Exhibit #	Description	Submitted by	Disposition
1	Tow Hearing Request Form	Walbridge, Timothy R.	Received
2	Tow Desk printout	Hearings Office	Received
3	Notice of Hearing	Hearings Office	Received
4	Notice of Rights and Procedures	Hearings Office	Received
5	Towed Vehicle Record	Police Records	Received
6	Data printout	Police Records	Received
7	Oregon Police Traffic Crash Report	Police Records	Received
8	PPB Special Report	Police Records	Received