



# CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

## Hearings Office

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## HEARINGS OFFICER'S ORDER

APPEAL OF FERNANDO A. AGUILERA

CASE NO. 1120139

DESCRIPTION OF VEHICLE: Geo Storm (OR 171FSP)

DATE OF HEARING: August 7, 2012

### APPEARANCES:

Mr. Fernando Aguilera, Appellant

HEARINGS OFFICER: Ms. Kimberly M. Graves

Mr. Aguilera appeared at the hearing and testified on his 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 Mr. Aguilera and the documents admitted into evidence (Exhibits 1 through and including 14).

### Summary of Evidence:

Mr. Aguilera submitted a Tow Hearing Request Form, Exhibit 1, regarding the tow of his vehicle on July 20, 2012. Mr. Aguilera indicates that, "I was stopped in front of apartment (sic) complex leaving my sisters. Non traffic violation." Mr. Aguilera appeared at the hearing and stated that he was stopped while he was driving. Mr. Aguilera stated that he was leaving the apartment complex where his sister lives, when he was "boxed in" by the police. Mr. Aguilera stated that when he stopped his was partially in the driveway for the apartment complex, and partially on the roadway. Mr. Aguilera stated that he asked to move his vehicle out of the roadway, but that the officers refused to let him. Mr. Aguilera testified that he was taken into custody by the police officers.

The City submitted Exhibits 5 through, and including, 14 for the Hearings Officer's consideration. Exhibit 5 is a Towed Vehicle Record indicating that Mr. Aguilera's vehicle was towed because it was a hazard. Exhibit 6 is a printout of Mr. Aguilera's vehicle information. Exhibits 7 through, and including, 10 relate to the release of Mr. Aguilera's vehicle from the police department and tow yard. Exhibit 11 is an Investigation Report indicating that on July 20, 2012, Mr. Aguilera was the subject of a criminal investigation. The report indicates that a disturbance at a bar led the police to contact Mr. Aguilera. The report indicates that Mr. Aguilera was located while driving his vehicle. The report, in its final line, reads, "X1's vehicle was towed by Speeds towing due to it blocking southbound traffic on SE 80<sup>th</sup> Ave." Exhibits 12 and 13 relate to the criminal investigation, but no to the tow of

Mr. Aguilera's vehicle. Exhibit 14 is a Notice of Tow again indicating that the vehicle was towed because it was a hazard, and was blocking traffic on SE 80<sup>th</sup> Ave.

**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:**

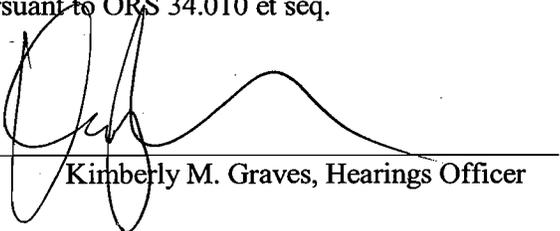
The Hearings Officer finds that on July 20, 2012, Mr. Aguilera's vehicle was parked in a manner which created a traffic hazard by impeding the safe movement of vehicular traffic. The Hearings Officer finds that Mr. Aguilera was unavailable to move the vehicle from the roadway to alleviate the impediment and public safety risk due to being taken into police custody. The Hearings Officer finds the tow of Mr. Aguilera'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: August 13, 2012  
KMG:c1/c2



Kimberly M. Graves, Hearings Officer

Enclosure

Bureau: Police  
Tow Number: 11355

Exhibit #	Description	Submitted by	Disposition
1	Appeal Form page 2	Turner, Anna	Received
2	TriMet Fare Inspection System printout	Turner, Anna	Received
3	Notice of Exclusion	Turner, Anna	Received
4	Mailing List	Hearings Office	Received
5	Notice of Hearing	Hearings Office	Received
6	Statement of Rights	Hearings Office	Received
7	Notice of Hearing	Hearings Office	Received
8	Letter	Burris, Donald G.	Received
9	Memo to Archives	Hearings Office	Received