

CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF SHARON GREENFIELD

CASE NO. 1120136

DESCRIPTION OF VEHICLE: Homemade Trailer (OR R794258)

DATE OF HEARING: August 7, 2012

APPEARANCES:

Ms. Sharon Greenfield, Appellant

Mr. Willie May, on behalf of the City

HEARINGS OFFICER: Ms. Kimberly M. Graves

Ms. Greenfield appeared at the hearing and testified on her own behalf. Mr. May 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. Greenfield and Mr. May and the documents admitted into evidence (Exhibits 1 through and including 5).

Summary of Evidence:

Ms. Greenfield submitted a Tow Hearing Request, Exhibit 1, regarding the tow of her vehicle on July 19, 2012 from SE 87th Avenue. Ms. Greenfield writes that she was out of town when the tow warning notice was placed on her trailer. Ms. Greenfield writes that she learned about the notice from her neighbor, and called the number on it from her campsite. Ms. Greenfield writes that she spoke with "Willy" from the City and he stated that he was not going to tow the trailer. Ms. Greenfield appeared at the hearing and indicated that she had two voicemail messages on her phone that Mr. May left for her, and she would like to play the message for the Hearings Officer. Ms. Greenfield also submitted a copy of the messages on CD, Exhibit 5. The first message from Mr. May was dated July 13, 2012 at 2:19 p.m. and indicated that Mr. May could not find any information about the vehicle in "his system" and that he would not be towing the vehicle over the weekend. The next call from Mr. May was dated July 13, 2012 at 2:27 p.m. and again indicates that there is no information in the system about Ms. Greenfield's vehicle being "warned." Ms. Greenfield testified that she was out of town until July 18th, and slept on July 19th until her neighbor woke her up to tell her that her trailer was being towed.

Mr. May appeared and testified on behalf of the City. The City did not submit any documents for the Hearings Officer's consideration. Mr. May testified that a report was made to the City about Ms. Greenfield's trailer. Mr. May testified that he responded and "warned" the trailer with a sticker. Mr. May testified that greater than 72 hours later he ordered the vehicle towed. Mr. May did not have any written reports with him, and was unable to provide the date in which the vehicle was warned. Mr. May testified that he spoke with Ms. Greenfield and did tell her that her trailer would be "okay." Mr. May testified that Ms. Greenfield told him that she would be back on Wednesday, and the trailer wasn't towed until Thursday or Friday.

Applicable Law:

The Hearings Officer must find a tow is valid if the Hearings Officer finds that 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. PCC 16.90.005 defines, for the purposes of towing a vehicle in Portland, the term "abandoned." A vehicle is deemed to be abandoned if the vehicle remains in violation for more than 24 hours and if the vehicle does not have a lawfully affixed, unexpired registration plate, or fails to display current registration or the vehicle appears inoperative or disabled. An "abandoned" vehicle may be towed and stored at the owner's expense if the vehicle is parked in the public right-of-way. (PCC 16.30.210 A.10) A vehicle may be towed 72 hours after notice of intent to tow has been affixed to or placed on the vehicle (PCC 16.30.225 B).

Findings of Fact and Conclusions of Law:

The Hearings Officer finds that the City has failed to submit any evidence or testimony to establish why Ms. Greenfield's vehicle was labeled as an "abandoned" vehicle. The Hearings Officer finds that the City has failed to submit any information to establish when Ms. Greenfield's vehicle was warned with a tow warning sticker, where the sticker was placed on the vehicle, or what information the sticker provided about the basis for towing the vehicle. The Hearings Officer finds that the City has failed to meet its burden with respect to the tow of Ms. Greenfield's vehicle on July 19, 2012. The Hearings Officer finds the tow of Ms. Greenfield's vehicle to be invalid.

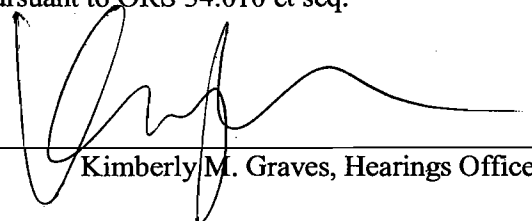
Order:

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.

In order for the appellant to receive reimbursement, a complete and legible copy of the towing and storage bill must be furnished to the Hearings Officer by September 6, 2012.

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

Dated: August 14, 2012
KMG:c1



Kimberly M. Graves, Hearings Officer

Enclosure

Bureau: Abandoned Autos
Tow Number: 11331

Exhibit #	Description	Submitted by	Disposition
<u>1</u>	<u>Tow Hearing Request Form</u>	<u>Greenfield, Sharon</u>	<u>Received</u>
<u>2</u>	<u>Tow Desk printout</u>	<u>Hearings Office</u>	<u>Received</u>
<u>3</u>	<u>Hearing Notice</u>	<u>Hearings Office</u>	<u>Received</u>
<u>4</u>	<u>Notice of Rights and Procedures</u>	<u>Hearings Office</u>	<u>Received</u>
<u>5</u>	<u>CD</u>	<u>Greenfield, Sharon</u>	<u>Received</u>