

CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF Katherine E. Ross

CASE NO. 1120185

DESCRIPTION OF VEHICLE: Subaru Legacy (OR CK77394)

DATE OF HEARING: October 11, 2012

APPEARANCES:

Ms. Katherine Ross, Appellant

HEARINGS OFFICER: Ms. Kimberly M. Graves

Ms. Ross 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. Ross and the documents admitted into evidence (Exhibits 1 through and including 10).

Summary of Evidence:

Ms. Ross submitted a Tow Hearing Request Form, Exhibit 1, with a type-written letter, Exhibit 1a, regarding the tow of her vehicle on September 28, 2012. Ms. Ross writes that she believes the tow of her vehicle was "unjustified" because her vehicle was "not abandoned, inoperative or disabled." Ms. Ross writes that she parked her vehicle near a friend's house before leaving town for a "multi-day river trip" out-of-state. Ms. Ross writes that she parked away from any private driveways and near a corner. Ms. Ross writes that she was not aware that she was not allowed to park her vehicle on the street for greater than 24 hours. At the hearing, Ms. Ross testified her vehicle was not abandoned, and that she had parked it near a friend's house while she was out of town. Ms. Ross testified that her trip out of town was for a month, and that she parked her vehicle on the street at the beginning of September. Ms. Ross testified that her vehicle was "filthy" when she picked it up, most likely from sap falling from the tree she parked under.

The City submitted Exhibits 5 through, and including, 10 for the Hearings Officer's consideration. Exhibit 5 is a Tow Hearing Report indicating that the vehicle was towed on September 28, 2012 from NE 43rd. The report indicates that the vehicle was first located and warned on September 18, 2012 at 11:15 a.m. The report indicates that the vehicle was warned because it appeared "inoperative and disabled" and that the vehicle was parked the "wrong way" on the street. The report indicates that the vehicle had "debris around and the windows were covered in pitch, so it was unable to see out of them." The report indicates that the representative from the

abandoned autos section returned on September 28, 2012 and found the vehicle in the same location with the window sticker still in place. The vehicle was cited and towed on September 28, 2012. Exhibit 6 contains the information included in Exhibit 5 regarding the warning and tow of the vehicle. Exhibit 8 is a copy of the citation issued to Ms. Ross when her vehicle was towed. Exhibit 9 contains 3 photos related to the tow of Ms. Ross's vehicle, while Exhibit 10 contains an enlargement of one of the photos. The photos show a green tow warning sticker on the driver's side window and a note reading "Could you please remove car for tree trimming" on the front window. The condition of the front window is not readily apparent in the photos, though the window and the vehicle do appear to have some debris on them.

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:

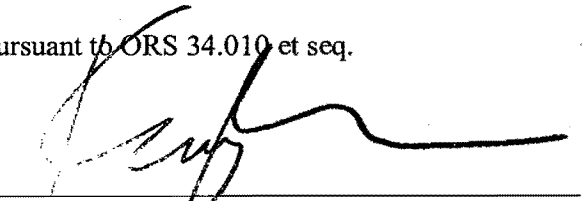
The Hearings Officer finds that at the beginning of September 2012 Ms. Ross parked her vehicle on a public right-of-way. The Hearings Officer finds that the vehicle remained in the same location until it was towed on September 28, 2012. The Hearings Officer finds that on September 18, 2012, almost 3 weeks after the vehicle was parked on the public right-of-way, a member of the abandoned autos section of the Bureau of Transportation located the vehicle and concluded that it was inoperative or disabled due to debris on and around the vehicle. The Hearings Officer finds that the conclusion of the abandoned autos representative was reasonable given the length of time the vehicle had been parked. The Hearings Officer finds that on September 18, 2012 Ms. Ross's vehicle fit the definition of an Abandoned Auto found within the PCC. The Hearings Officer finds that the vehicle was appropriately warned on September 18, 2012 with a Tow Warning notice. The Hearings Officer finds that Ms. Ross's vehicle remained in the same location greater than 72 hours after the Tow Warning notice was affixed to the vehicle. The Hearings Officer finds that the tow of the vehicle as an abandoned automobile on September 28, 2012 was authorized under the PCC. The Hearings Officer finds the tow of Ms. Ross'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: October 12, 2012
KMG:c2/ml



Kimberly M. Graves, Hearings Officer

Enclosure

Bureau: Abandoned Autos
Tow Number: 14968

Exhibit #	Description	Submitted by	Disposition
1	Tow Hearing Request Form	Ross, Katherine E.	<u>Received</u>
1a	Letter	Ross, Katherine E.	<u>Received</u>
2	Tow Desk printout	Hearings Office	<u>Received</u>
3	Notice of Hearing	Hearings Office	<u>Received</u>
4	Statement of Rights and Procedures	Hearings Office	<u>Received</u>
5	Tow Hearing Report	Abandoned Autos	<u>Received</u>
6	Detail For Case No: AUT2012-010777	Abandoned Autos	<u>Received</u>
7	16.20.170 Storing Property on Street Prohibited	Abandoned Autos	<u>Received</u>
8	Parking Violation #HA09616492	Abandoned Autos	<u>Received</u>
9	Photos	Abandoned Autos	<u>Received</u>
10	Large photo	Abandoned Autos	<u>Received</u>