



# CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

## Hearings Office

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## HEARINGS OFFICER'S ORDER

APPEAL OF SAMUEL BUCK

CASE NO. 1120147

DESCRIPTION OF VEHICLE: Nissan Sentra (OR 791FLS)

DATE OF HEARING: August 23, 2012

APPEARANCES:

Samuel Buck, Appellant

HEARINGS OFFICER: Ms. Kimberly M. Graves

Mr. Buck 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. Buck and the documents admitted into evidence (Exhibits 1 through and including 12).

### Summary of Evidence:

Mr. Buck submitted a Tow Hearing Request Form, Exhibit 1, regarding the tow of his vehicle on August 11, 2012 from Interstate 5. Mr. Buck included with his Request Form a type-written note about the tow of his vehicle. Mr. Buck appeared at the hearing and testified on his own behalf. Mr. Buck testified that his vehicle overheated while driving on I-5 and that he was unable to get to the right hand side of the roadway. Mr. Buck testified that he stopped his vehicle on the left side of the road, and turned on the hazard lights. Mr. Buck testified that he had a friend, who was following him home, pick him up and take him to a tow company. Mr. Buck testified that the first tow company that he contacted was closed, and that the second tow company indicated that they could tow the vehicle in about 1 hour. Mr. Buck testified that he scheduled a tow for his vehicle. Mr. Buck testified that he did not return to where his vehicle was parked because the location was dangerous, and he was concerned that he could be injured if his vehicle was struck. Mr. Buck testified that he went home to wait for the tow truck to deliver his vehicle to his house. Mr. Buck submitted 3 new exhibits into the evidentiary record. Exhibits 10 and 11 are print outs from Google Maps showing the location of towing companies near where Mr. Buck's vehicle was stopped on I-5. Exhibit 12 is a screen shot from Mr. Buck's phone showing that at 7:43 p.m. on August 11, 2012 he contacted a towing company to order a tow for his vehicle. Mr. Buck testified that he believes that he did everything that he needed to do to have his vehicle removed from the roadway. Mr. Buck wrote in Exhibit 1 that he would like the "release fee" imposed by the police bureau refunded to him.

The City submitted Exhibits 6 through, and including, 8 for the Hearings Officer's consideration. Exhibit 6 is a Towed Vehicle Record showing that the vehicle was towed because it was a hazard. Exhibit 7 is an Investigation report from the Portland Police Bureau written by Officer Newhard. The report indicates that Mr. Buck's vehicle was located on August 11, 2012 at 7:55 p.m. by the officer. The narrative portion of the report indicates that the officer was on routine patrol when she observed the vehicle, with its hazard light on, parked on the left side of the roadway and partially blocking traffic. The report indicates that the vehicle was unoccupied. The report indicates that a tow was ordered for the vehicle because it was a hazard. Exhibit 8 is a Notice of Tow indicating that the vehicle was towed because it was a hazard. The following has been written onto the form by the officer, "Blocking lane of traffic S/B i-5 at Terwilliger Exit."

**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 Mr. Buck credible and finds his statements to accurately reflect the events which led to the tow of his vehicle. The Hearings Officer finds that on August 11, 2012 Mr. Buck's vehicle stalled while being driven on I-5. The Hearings Officer finds that Mr. Buck moved his vehicle as far to the side of the roadway as possible, and turned on the vehicle's hazard lights. The Hearings Officer finds that Mr. Buck ordered a tow truck for his vehicle, and that he did so in a timely fashion. The Hearings Officer finds that a delay on the part of the tow company led to Mr. Buck's vehicle being towed by the Portland police. The Hearings Officer finds that the location of the vehicle created a hazard to other driver's on the roadway because of the curving nature of the roadway in the area. The Hearings Officer also finds that the vehicle posed an immediate danger to public safety because the vehicle was partially into the roadway. The Hearings Officer finds that the officer was following the relevant rules in the PCC when she ordered a tow of the vehicle. The Hearings Officer finds the tow of Mr. Buck's vehicle to be valid.

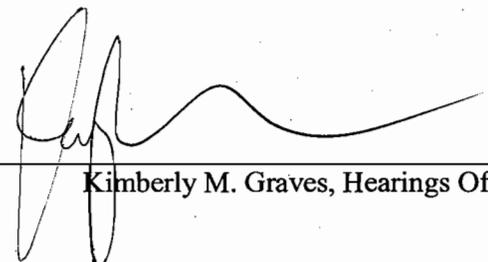
**Order:**

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 24, 2012  
KMG:c1/m2

Enclosure



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Kimberly M. Graves, Hearings Officer

Bureau: Police  
Tow Number: 12461

<b>Exhibit #</b>	<b>Description</b>	<b>Submitted by</b>	<b>Disposition</b>
1	Tow Hearing Request Form	Buck, Samuel	Received
2	Oregon Vehicle Certificate of Title	Buck, Samuel	Received
3	Tow Desk printout	Hearings Office	Received
4	Hearing Notice	Hearings Office	Received
5	Notice of Rights and Procedures	Hearings Office	Received
6	Towed Vehicle Record	Police Records	Received
7	Investigation Report	Police Records	Received
8	Investigation Report	Police Records	Received
9	Address	Buck, Samuel	Received
10	Google printout	Buck, Samuel	Received
11	Google map	Buck, Samuel	Received
12	Cell Phone screen shot	Buck, Samuel	Received