

CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF ROSIE L. JEFFERSON

CASE NO. 1120176

DESCRIPTION OF VEHICLE: Cadillac DeVille (OR 865FJC)

DATE OF HEARING: October 9, 2012

APPEARANCES:

Ms. Julia Jefferson, Authorized Representative for Appellant

HEARINGS OFFICER: Ms. Kimberly M. Graves

Ms. Julia Jefferson appeared at the hearing and testified on behalf of Appellant. 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. Jefferson and the documents admitted into evidence (Exhibits 1 through and including 10).

Summary of Evidence:

Appellant submitted a Tow Hearing Request Form, Exhibit 1, regarding the tow of her vehicle on September 24, 2012 from "approx. 80th-Division." In the form, Appellant indicates that she believes the tow of her vehicle is invalid because "I've parked in the same location for the last year and have never had any issues with parking there. The sign posted states no parking with an arrow facing in the opposite direction. I was clearly park (sic) in an area that was clear of any sign stating no parking." Appellant indicates that she has photos of the area to submit at the hearing. Ms. Julia Jefferson appeared at the hearing and testified that she was parked closer to SE 80th Ave and not SE 79th Ave as the officer's report indicates. Ms. Jefferson testified that she has parked in this area the entire time she has been attending PCC, and that she is very careful about where she parks. Ms. Jefferson testified that she was parked with her rear bumper next to the driveway for the "school or administration building" which is on Division. Ms. Jefferson drew a diagram to illustrate where she was parked. (Exhibit 10) Ms. Jefferson also submitted photos showing the area where the vehicle was parked. (Exhibit 9)

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 for being parked in a No Parking Area. Exhibit 7 is an Investigation Report from the Portland Police Bureau. The report indicates that the officer was on routine patrol on September 24, 2012 when he observed Appellant's vehicle parked on SE Division around SE 79th. The

report indicates that the vehicle was parked on the north side of the street near the westbound curb. The report indicates that where the vehicle was parked "blocks that lane for vehicular travel and could cause an accident or damage to the vehicle if hit. The report also indicates that there are "signs clearly posted that say No Parking Anytime." Exhibit 8 is a Notice of Tow which indicates that the vehicle was towed because it was a Hazard and in a No Parking Anytime zone.

At the time of the hearing, the Hearings Officer concluded that it would be helpful to view the location where the vehicle was parked prior to being towed. The Hearings Officer asked Ms. Jefferson if she had any objection to the Hearings Officer driving by the location. Ms. Jefferson indicated that she did not. The Hearings Officer, on October 11, 2012 drove by the location where Appellant's vehicle was parked prior to towing. The Hearings Officer approached the location from the east and drove past the location twice traveling in the northernmost westbound lane. The Hearings Officer found that near the corner of SE 82nd and Division, on Division Street, there is a small No Parking Anytime area designated for bus use only. The westernmost sign has only one arrow pointing toward 82nd Ave. After the No Parking Anytime sign pointing toward 82nd, the Hearings Officer saw approximately 15 vehicles parked along the north side of Division Street. These vehicles lined the street up to the driveway Ms. Jefferson mentioned in her testimony. There were also approximately 2-3 vehicles parked west of the driveway, in the area where Ms. Jefferson testified that she parked the Appellant's vehicle. Approximately 2-3 car lengths west of the driveway, there was a No Parking Anytime sign with an arrow pointing away from the driveway; west of the driveway. Continuing west there was a sign for SE 79th Ave shortly after the No Parking Anytime sign. The Hearings Officer found that safe travel in the northernmost westbound lane was not impeded by the presence of the vehicles parked on SE Division St.

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.

PCC 16.20.210 provides that no vehicle may park in any no-parking zone at any time. PCC 16.30.210A1 provides that a vehicle may be towed and held at the expense of the owner from any public right-of-way when the vehicle is parked in violation of a permanent parking restriction. PCC 16.30.220B permits any authorized officer to tow a vehicle without prior notice when the vehicle is illegally parked in a conspicuously posted restricted space, zone, or traffic lane.

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 the City has the burden to provide sufficient evidence to prove that the tow of Appellant's vehicle is valid. The Hearings Officer finds Ms. Jefferson credible in her statement about where her vehicle was parked prior to being towed. The Hearings Officer finds that a vehicle parked in the location described by Ms. Jefferson would be lawfully parked, and would not be a hazard to other vehicles on the roadway. The Hearings Officer finds that the city has failed to provide sufficient evidence to prevail over Ms. Jefferson's testimony. The Hearings Officer finds the tow of Appellant's vehicle is invalid.

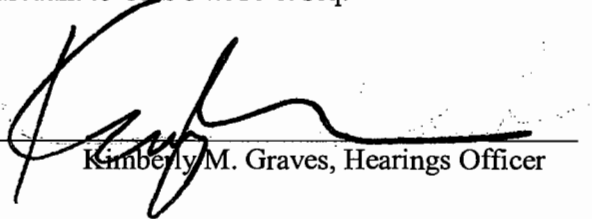
Order:

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 Office by November 12, 2012.

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

Dated: October 12, 2012
KMG:c1/ml



Kimberly M. Graves, Hearings Officer

Enclosure

Bureau: Police
Tow Number: 14738

If a refund has been authorized, it will be sent from the City's Accounts Payable Office. Please allow at least 3 weeks.

Exhibit #	Description	Submitted by	Disposition
1	Tow Hearing Request Form	Jefferson, Rosie L.	Received
2	Tow Desk printout	Hearings Office	Received
3	Hearing Notice	Hearings Office	Received
4	Statement of Rights and Procedures	Hearings Office	Received
5	2nd Tow Hearing Request Form (not a duplicate - same tow)	Jefferson, Rosie L.	Received
6	Towed Vehicle Record	Police Records	Received
7	Investigation Report	Police Records	Received
8	Notice of Tow	Police Records	Received
9	Photos	Jefferson, Rosie L.	Received
10	Diagram	Jefferson, Rosie L.	Received