

CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

1900 SW 4th Avenue, Room 3100

Portland, OR 97201

phone: (503) 823-7307 - fax: (503) 823-4347

web: www.portlandoregon.gov/auditor/hearings



HEARINGS OFFICER'S ORDER

APPEAL OF RACHAL ANNE PROFFER

CASE NO. 1120181

DESCRIPTION OF VEHICLE: Subaru Baja (MI CHJ6980)

DATE OF HEARING: October 9, 2012

APPEARANCES:

Mr. Johnnie Proffer, Authorized Representative for Appellant

HEARINGS OFFICER: Ms. Kimberly M. Graves

Mr. Johnnie Proffer, authorized representative, 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 Mr. Proffer and the documents admitted into evidence (Exhibits 1 through and including 12).

Summary of Evidence:

Appellant submitted a Tow Hearing Request Form, Exhibit 1, regarding the tow of her vehicle on September 28, 2012. In Exhibit 1, Appellant authorized Mr. Proffer to appear on her behalf at the hearing. Appellant writes in Exhibit 1 that she believes the tow of the vehicle is invalid because "The vehicle was legally parked at the time of the tow." Mr. Proffer appeared at the hearing and testified that he was the driver of the vehicle on the evening that it was towed, and that the vehicle was legally parked prior to towing. Mr. Proffer testified that the vehicle was parked near the corner of SW 17th and SW Spring Garden when it was towed. Mr. Proffer submitted photos of the area where the vehicle was prior to towing. Mr. Proffer testified that the vehicle was parked in front of a home, in a gravel area off of the roadway. The photos were entered into the record as Exhibit 11. The photos show a small home with a large gravel area in front of the home which appears to be large enough to park a vehicle in. The photos also show a No Parking sign at the end of the gravel area with an arrow pointing away from the gravel area. There is no signage shown in the photos which would indicate that parking is prohibited in the gravel area.

The City submitted Exhibits 5 through, and including, 10 for the Hearings Officer's consideration. Exhibit 5 is a Towed Vehicle Record which shows that Appellant's vehicle was towed on September 28, 2012 from SW 17th and SW Spring Garden. The violation listed is "NPA" or No Parking Area. Approximately half way down the

page is a hand written note which reads "Note: Not a hazard, per H.L." Exhibit 8 is a Special Report from the Portland Police Bureau. The report in the middle of page 1 reads, "The vehicle pulled off the road into a posted no parking zone near SW Spring Garden and SW 17th Ave." On page 2 the report reads, "Vehicle was towed by Buck's Towing for a Hazard Tow as it was parked in a posted No Parking Zone." Exhibit 6, 7 and 10 are unrelated to the basis of the tow, and are not considered when making this decision.

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 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.

Findings of Fact and Conclusions of Law:

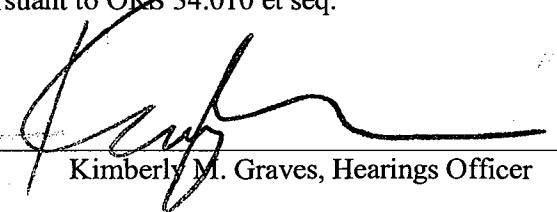
The Hearings Officer finds the burden lies with the City to provide sufficient evidence to prove that the tow of the vehicle is valid. The Hearings Officer considers only whether the vehicle was parked in a No Parking Area, and not whether the vehicle was a hazard based on the notation in Exhibit 5 indicating that the vehicle was not a hazard. The Hearings Officer finds that the street where Mr. Proffer parked on September 28, 2012 has areas in which parking is permitted, and areas in which parking is prohibited. The Hearings Officer considers the testimony of Mr. Proffer about where the vehicle was parked prior to towing to be credible, and finds that the City has failed to meet its burden to provide sufficient evidence to prevail over the testimony of Mr. Proffer. The Hearings Officer finds the tow of Appellant'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.

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

Dated: October 10, 2012
KMG:c1/ml



Kimberly M. Graves, Hearings Officer

Enclosure

Bureau: Police
Tow Number: 14937

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	Proffer, Rachal Anne	Received
2	Tow Desk printout	Hearings Office	Received
3	Hearing Notice	Hearings Office	Received
4	Statement of Rights	Hearings Office	Received
5	Towed Vehicle Record	Police Records	Received
6	LEDS printout	Police Records	Received
7	Custody Report	Police Records	Received
8	Special Report	Police Records	Received
9	Citation	Police Records	Received
10	Breath Test Report	Police Records	Received
11	Photos	Proffer, Johnnie	Received
12	Tow Invoice	Proffer, Johnnie	Received