



# CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

## Hearings Office

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## HEARINGS OFFICER'S ORDER

APPEAL OF ROBERT R. JACOBS

CASE NO. 1120189

DESCRIPTION OF VEHICLE: Honda Accord (WA 888ZYZ)

DATE OF HEARING: October 23, 2012

### APPEARANCES:

Mr. Robert R. Jacobs, Appellant

HEARINGS OFFICER: Ms. Kimberly M. Graves

Mr. Jacobs 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. Jacobs and the documents admitted into evidence (Exhibits 1 through and including 10)

### Summary of Evidence:

Mr. Jacobs submitted a Tow Hearing Request Form, Exhibit 1, regarding the tow of his vehicle on October 12, 2012. Mr. Jacob indicates that he believes the tow of his vehicle is invalid because the vehicle was stolen on October 6, 2012. Mr. Jacob writes that the vehicle was "impounded" on October 12, 2012 while a person unknown to him was driving it. Mr. Jacob writes he did not give permission to anyone to drive the vehicle, and that the vehicle has damage consistent with being stolen. Mr. Jacobs reiterated at the hearing the information that was contained in Exhibit 1. Mr. Jacobs submitted a number of photos showing the condition of the vehicle when it was released from impound. (Exhibit 10) Mr. Jacobs added that there was a valid insurance card in the glove box of the vehicle. Mr. Jacobs summarized his argument regarding the validity of the tow by saying "we didn't have control of the vehicle" prior to towing.

The City submitted Exhibit 5 through, and including, 9 for the Hearings Officer's consideration. Exhibit 5 is a Towed Vehicle Record indicating that the vehicle was towed on October 12, 2012 because it was being operated while uninsured. Exhibit 6 is a Traffic Violation Tow Report written by Officer Zelinka of the Portland Police Bureau. The report indicates on page 2 that the individual driving the vehicle stated that he had "borrowed the vehicle" and that the vehicle was not insured. The narrative portion of the report indicates that a call was received that 3 people were trying to break into a vehicle. Officer Zelinka arrived on scene and observed a vehicle failing to yield as it left a driveway. Officer Zelinka writes that he stopped the vehicle and found that it contained 3

occupants. Officer Zelinka writes that the driver was identified as Mr. Johnson and that Mr. Johnson stated that he "had no insurance." The report indicates that Mr. Johnson was cited and a tow was ordered. Exhibit 7 is a Notice of Tow indicating that the vehicle was towed for "driving uninsured." Exhibits 8 and 9 are unrelated to the basis for the tow of the vehicle.

### **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 and the Oregon Revised Statutes ("ORS"). ORS 806.011 provides that;

*"an unexpired card issued as provided in ORS 742.447, or other current proof of compliance with financial or future responsibility requirements approved by rule by the Department of Transportation, shall be carried in each motor vehicle that is operating in this state . . . Failure of the driver of a motor vehicle to show a valid card or other proof of compliance when asked to do so by a police officer is reasonable grounds for the officer to believe that the person is operating the vehicle in violation of ORS 806.010."* (Emphasis added.)

ORS 806.010 indicates that a person commits the offense of driving uninsured if the person operates a motor vehicle without being insured under a motor vehicle liability insurance policy. PCC 16.30.220K1 authorizes an officer to tow a vehicle, without notice, when the officer has probable cause to believe that the vehicle's operator has committed the offense of Driving Uninsured under ORS 806.010.

### **Findings of Fact and Conclusions of Law:**

The Hearings Officer finds that PCC 16.30.220K1 would, on its face, permit the tow of Mr. Jacobs vehicle in the situation described in Exhibit 6 by Officer Zelinka; however, the 9<sup>th</sup> Circuit Court of Appeals case, *Miranda v. City of Cornelius*, 429 F.3d 858, 2005, has added an additional step to the analysis in such cases.

In *Miranda v. City of Cornelius*, the 9<sup>th</sup> Circuit reviewed the validity of a city ordinance that permitted an officer to tow a vehicle, without prior notice, if the officer had a reasonable belief that the driver was operating the vehicle without a license. The ordinance was challenged as an unreasonable seizure in violation of the Fourth Amendment. The Court concluded that probable cause was a standard peculiar to criminal investigations, not routine non-criminal procedures. As such, the Court stated that "the police's authority to search and seize property when acting in its role as "community caretaker" has a different source than its authority to search and seize property to investigate criminal activity." The court concluded that when in their "community caretaking" function, police officers may impound vehicles that "jeopardize public safety and the efficient movement of vehicular traffic." The Court continued that the validity of impoundment in such cases turns "on the location of the vehicle and the police officers' duty to prevent it from creating a hazard to other drivers or being a target for vandalism or theft."

The Hearings Officer finds that there is no evidence in the record about the exact location where the vehicle was parked prior to towing. There is no evidence on the record that the vehicle, where parked, posed a threat to public safety or was a hazard to other drivers. While the evidence does reflect that Officer Zelinka was under the belief that the vehicle was not insured, and as such Mr. Jacobs would not have been able to legally remove the vehicle from the public location at that time, the Hearings Officer finds there is no evidence Mr. Jacobs could not have legally removed it in a reasonable amount of time (either by obtaining insurance or retrieving his proof of insurance).

Accordingly, the Hearings Officer finds that based on the evidence in the record, the order to tow this vehicle under PCC 16.30.220K1, under these facts, was not sufficient under the "community caretaker" doctrine; therefore the tow of Mr. Jacobs vehicle is not valid.

**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.

**Mr. Jacobs must submit any additional documentation for reimbursement to the Hearings Office by November 6, 2012. In order to receive reimbursement, documents must be complete and legible. Please submit the original receipt when possible. Altered or illegible documents will not be processed for reimbursement.**

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



Kimberly M. Graves, Hearings Officer

Dated: October 24, 2012  
KMG:c1/m2

Enclosure

Bureau: Police  
Tow Number: 15782

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

<b>Exhibit #</b>	<b>Description</b>	<b>Submitted by</b>	<b>Disposition</b>
1	Tow Hearing Request Form	Jacobs, Robert R.	Received
2	Tow Desk printout	Hearings Office	Received
3	Hearing Notice	Hearings Office	Received
4	Statement of Rights and Procedures	Hearings Office	Received
5	Towed Vehicle Record	Police Records	Received
6	Traffic Violation Tow Report	Police Records	Received
7	Notice of Tow	Police Records	Received
8	WA Driver License	Police Records	Received
9	Vehicle Release	Police Records	Received
10	Color Photo Set	Jacobs, Robert R.	Received
11	Invoice	Jacobs, Robert R.	Received