



CITY OF PORTLAND

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Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF DUTCHESS KENNEDY

CASE NO. 1120198

DESCRIPTION OF VEHICLE: Cadillac Deville (OR 886FDY)

DATE OF HEARING: October 25, 2012

APPEARANCES:

Ms. Dutchess Kennedy, Appellant

HEARINGS OFFICER: Mr. Gregory J. Frank

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Ms. Kennedy ("Kennedy") appeared at the October 25, 2012 hearing and testified on her own behalf. No person appeared at the hearing to testify on behalf of the City of Portland ("City"). The Hearings Officer makes this decision based upon the testimony of Kennedy and the documents admitted into the evidentiary record (Exhibits 1 through and including 8).

The Hearings Officer must find a tow valid if the Hearings Officer finds that the person ordering the tow followed the relevant laws/rules. In this case the relevant laws/rules are 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 16.20.130 V., PCC 16.30.220B and PCC 16.90.105.

PCC 16.20.130 V states that it is unlawful to park or stop a vehicle in front of any portion of a driveway ingress/egress to the public right-of-way. PCC 16.90.105 defines a "driveway" for the purposes of Title 16. In summary, PCC 16.90.105 defines a "driveway" as an access extending from a public right-of-way onto private or public lands for the purpose of gaining vehicular access to such areas and reasonably designated at the property line so as to be an obvious open for access. For the purposes of enforcement a driveway extends from one curb return to the other and if winged, includes the wings. PCC 16.30.220 B permits a vehicle to be towed without prior notice and stored, at the owner's expense, in a location where parking is prohibited.

Kennedy testified that when she parked her vehicle (Cadillac, Oregon license 886FDY – hereafter, "The Vehicle"), prior to its being towed, it was dark and she did not observe a driveway. Kennedy stated that when she discovered that The Vehicle was gone from the location where she had parked it, she noticed a paved area covered

by leaves. Kennedy stated that she talked with a woman who identified herself as the owner of the property adjacent to where she had parked and was told that the paved area was not used as a driveway.

Kennedy testified that she had taken photographs of the location (Exhibit 8) where she parked The Vehicle. The two photos on the first page of Exhibit 8 show a narrow paved area that is covered by leaves. Kennedy stated that the photograph on the bottom of the second page of Exhibit 8 demonstrates how dark it was when she parked. The photograph on the top of the second page of Exhibit 8 shows the paved area (left side of photo), a curb alongside the street and a gate across the paved area in the background.

Exhibits 5, 6 and 7 were provided by the City. Exhibit 5, a Tow Hearing Report completed by the Parking Enforcement Officer ("Officer") who ordered The Vehicle towed on October 10, 2012, provides a narrative. The Officer states the following:

"Above vehicle was towed on service request #511 for blocking driveway for the resident at 134 N.E. Sumner. The driveway is very narrow, driveway goes to a gate as seen in pictures. The vehicle is blocking over half of the driveway and making the driveway unusable. Vehicle was towed."

Exhibit 6 is a copy of a Parking Violation. Exhibit 6 indicates that The Vehicle was ordered towed by the City on October 10, 2012 at approximately 1:32 pm. Exhibit 6 indicates that The Vehicle was towed for violating PCC 16.20.130.V by blocking a driveway. Exhibit 7 contains 4 color photographs. The photos show The Vehicle (identified by Make and License Number) clearly parked in front of a paved area.

The Hearings Officer finds that the photos provided by Kennedy (Exhibit 8) and the City (Exhibit 7) show a paved area connecting the street to a gate. The Hearings Officer finds that Exhibit 8 (second page top photo) clearly shows a curb and driveway wing adjacent to the paved area. The Hearings Officer finds that the paved area shown in Exhibits 7 and 8 is clearly a driveway as defined in PCC 16.90.105. The Hearings Officer finds that photos in Exhibit 7 demonstrate that on October 10, 2012 The Vehicle was parked within the paved area and therefore, within a driveway.

The Hearings Officer finds that the Officer who ordered The Vehicle towed on October 10, 2012 followed the relevant laws/rules. The Hearings Officer finds the City ordered tow of The Vehicle on October 10, 2012 is valid.

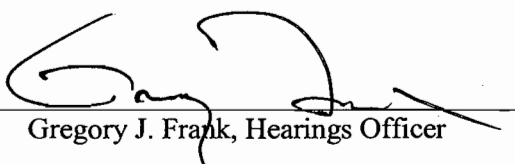
ORDER:

1. The City ordered tow of The Vehicle on October 10, 2012 is valid; Kennedy's appeal is denied.
2. All towing and storage charges against the vehicle shall remain the responsibility of the vehicle's owner.
3. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: October 26, 2012

GJF: c2

Enclosure



Gregory J. Frank, Hearings Officer

Bureau: Parking Enforcement
Tow Number: 15672

Exhibit #	Description	Submitted by	Disposition
1	Tow Hearing Request Form	Kennedy, Dutchess	Received
2	Tow Desk printout	Hearings Office	Received
3	Notice of Hearing	Hearings Office	Received
4	Statement of Rights and Procedures	Hearings Office	Received
5	Tow Hearing Report	Parking Enforcement	Received
6	Parking Violation #HA09705765	Parking Enforcement	Received
7	Photos	Parking Enforcement	Received
8	Photos	Kennedy, Dutchess	Received