



CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF JOEL P. SNYDER

CASE NO. 1120256

DESCRIPTION OF VEHICLE: Oldsmobile Cutlass (OR 840BGJ)

DATE OF HEARING: December 20, 2012

APPEARANCES:

Mr. Joel Snyder, Appellant

HEARINGS OFFICER: Ms. Kimberly M. Graves

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

Summary of Evidence:

Mr. Snyder submitted a Tow Hearing Request Form, Exhibit 1, regarding the tow of his vehicle on December 5, 2012. In Exhibit 1, Mr. Snyder writes that he believes the tow of his vehicle is invalid because "No signs or cones in place for 3 days." Mr. Snyder testified at the hearing that construction began on a house two houses down from his in September 2012. Mr. Snyder testified that the construction workers have a temporary parking permit which began in September, and was renewed in November, which allows them to reserve 100 feet of the block for parking construction vehicles. Mr. Snyder testified that he lives just two houses down from the construction site, and has been parking in the area the whole time the construction has been taking place. Mr. Snyder testified that on December 5, 2012 his vehicle was parked in its usual location in front of his home when it was towed. Mr. Snyder testified that on December 5, 2012 the temporary no parking signs the construction company uses to reserve their space had been moved. Mr. Snyder testified that along with his vehicle, two other neighbors had their vehicle's towed also. Mr. Snyder testified that he confronted a construction worker about the tow, and was told that he needed to "talk to his neighbors" because construction equipment had been vandalized. Mr. Snyder testified that after his vehicle was towed the temporary no parking signs were returned to their original location. Mr. Snyder testified that after his vehicle was towed he contacted the city office which issued the temporary parking permit to the construction company. Mr. Snyder testified that the city worker told him that the construction company is permitted to reserve 100 feet east of the property line. Mr. Snyder testified that his home is two houses west of the property where the construction is occurring. Mr. Snyder submitted Exhibits 8 through,

and including, 12 during the hearing. Exhibits 8 and 9 are photos of the area in front of Mr. Snyder's home. In the photos a temporary no parking sign can be seen on the property line between the house next to Mr. Snyder's and the house which is under construction. The wording on the temporary no parking sign is not visible in the photos. Based on the photos it appears that the temporary no parking signs are easily movable and are posted on metal or plastic "L" shaped stands. Mr. Snyder confirmed that the signs are posted on plastic stands. Exhibit 10, submitted by Mr. Snyder is a copy of the parking permit issued for construction. The permit indicates that 100 feet of space is reserved for "Trucks, Material and Equipment." Exhibit 11 is a handwritten note from Charles Howe. The note indicates that on December 5, 2012 there were no signs indicating that parking was restriction in front of Mr. Snyder's home, and that Mr. Howe saw no "cause" for why 2 vehicles were being towed.

The city submitted Exhibit 5 through, and including, 7 for the Hearings Officer's consideration. Exhibit 5 is a Tow Hearing Report which indicates that Mr. Snyder's vehicle was towed on December 5, 2012 from SE Alder for violating a temporary no parking restriction. The narrative portion of the report indicates that the barricades were verified on November 29, 2012. The report indicates that the construction contractor has a permit from November 12, 2012 through February 11, 2013. The report indicates that on November 5, 2012 a service request was received to remove a vehicle. The report indicates that the signs were verified as being in the same location as they were on November 29, 2012. The report indicates that the temporary no parking signs read "No Parking this Space All Hr, All Days Sub to Tow." Exhibit 6 is a copy of the citation issued when Mr. Snyder's vehicle was towed. Exhibit 7 contains 3 photos alleged to be related to the tow of Mr. Snyder's vehicle. The upper left photo shows the license plate of Mr. Snyder's vehicle. The upper right photo shows the language on the temporary no parking sign. The lower left photo shows the temporary no parking sign, and 2 unidentifiable vehicles parked in the area controlled by the signage. The Hearings Officer notes that neither of the vehicles in the photo appear to be Mr. Snyder's vehicle; they are the wrong model and wrong color. The Hearings Officer also notes that the orientation of the photo does not match with the location Mr. Snyder testified that his vehicle was towed from.

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 16.30.210 A.1, PCC 16.30.210 D, and PCC 16.30.220 B. PCC 16.30.210 A.1 authorizes a Parking Enforcement Officer to order a vehicle towed and stored, at the owner's expense, if the vehicle is parked in any public right-of-way and the vehicle is parked in violation of any temporary or permanent parking restriction. PCC 16.30.210 D states that temporary parking restrictions may be enforced by tow 24 hours after placement in any non meter area. PCC 16.30.220 B permits a Parking Enforcement Officer to order a vehicle towed, without prior notice, if the vehicle is illegally parked in a conspicuously posted restricted space/zone.

Findings of Fact and Conclusions of Law:

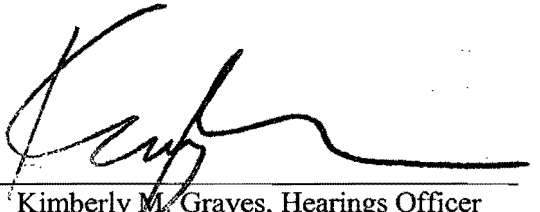
The Hearings Officer finds that evidence that the towed vehicle was parked in violation of a temporary no parking restriction is essential when evaluating the validity of a tow. The Hearings Officer finds Mr. Snyder's testimony to be credible with regard to the conditions which existed at the time when his vehicle was towed. The Hearings Officer finds that parking enforcement has failed to provide sufficient evidence to rebut the testimony of Mr. Snyder and to prove that Mr. Snyder's vehicle was parked in violation of the temporary parking restriction. The Hearings Officer finds that parking enforcement has not met its burden with respect to the tow of Mr. Snyder's vehicle. The Hearings Officer finds the tow of Mr. Snyder's vehicle is not valid.

Order:

Therefore, the Hearings Officer finds that the owner(s) or other person(s) who have an interest in the vehicle are not liable for the towing and/or storage charges and any money paid for towing and/or storage charges will be returned to the appellant.

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

Dated: December 21, 2012
KMG:c1/m2


Kimberly M. Graves, Hearings Officer

Enclosure

Bureau: Parking Enforcement
Tow Number: 19356

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 | Snyder, Joel P. | Received |
| 2 | Tow Desk printout | Hearings Office | Received |
| 3 | Hearing Notice | Hearings Office | Received |
| 4 | Notice of Rights and Procedures | Hearings Office | Received |
| 5 | Tow Hearing Report | Parking Enforcement | Received |
| 6 | Parking Violation | Parking Enforcement | Received |
| 7 | Photos | Parking Enforcement | Received |
| 8 | Photo | Snyder, Joel P. | Received |
| 9 | Photo | Snyder, Joel P. | Received |
| 10 | Permit to Use Dedicated Street | Snyder, Joel P. | Received |
| 11 | Letter from Charles Hawe | Snyder, Joel P. | Received |
| 12 | Receipt | Snyder, Joel P. | Received |