



# CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

## Hearings Office

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## HEARINGS OFFICER'S ORDER

APPEAL OF Michael West Mehaffy

CASE NO. 1120250

DESCRIPTION OF VEHICLE: Mazda MX5 Miata (OR 329 CGZ)

DATE OF HEARING: December 27, 2012

### APPEARANCES:

Mr. Michael Mehaffy

HEARINGS OFFICER: Ms. Kimberly M. Graves

Mr. Mehaffy 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. Mehaffy and the documents admitted into evidence (Exhibits 1 through and including 6).

### Summary of Evidence:

Mr. Mehaffy submitted a Tow Hearing Request Form, Exhibit 1, and a type-written statement, Exhibit 1a, regarding the tow of his vehicle on December 3, 2012 from SW Osage St. Mr. Mehaffy writes in Exhibit 1a that he was out of town when his vehicle was towed and that there were no temporary no parking signs posted when he parked the vehicle. Mr. Mehaffy writes that he is contesting the tow because "adequate notice of the Temporary No Parking was not given in this case." Mr. Mehaffy appeared at the hearing and testified that he left town on December 1, 2012 and before leaving he checked on his vehicle and did not see any temporary no parking signs. Mr. Mehaffy testified that he was out of town when his vehicle was towed on December 3, 2012. Mr. Mehaffy testified that he wishes that there were photos to show that the signs were properly placed, because he did not see any on December 1, 2012 when he checked.

The City submitted Exhibits 5 and 6 for the Hearings Officer's consideration. Exhibit 5 is a Tow Hearing Report which indicates that Mr. Mehaffy's vehicle was towed on December 3, 2012 at approximately 7:30 a.m. for violating a temporary no parking restriction. The narrative portion of the report reads, "Annual & routine street cleaning barricades in place and verified towed per policy. Ordinance vehicle must move every 24 hrs. No pictures due to malfunction of camera." The report indicates that the temporary no parking signs prohibited parking between 7:30 a.m. and 10:00 a.m. Monday. The report further indicates that the temporary no parking

signs were verified on November 30, 2012 at 2:18 p.m. Exhibit 6 is a copy of the citation issued to Mr. Mehaffy when his vehicle was towed.

**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 16.20.170 provides that "no person may store . . . a vehicle . . . on public right-of-way or other public property in excess of 24 hours without permission . . ." PCC 16.30.210D provides that temporary parking restrictions may be enforced by tow 24 hours after placement in any non meter area. PCC 16.30.210A1 provides that a vehicle may be towed from any public right-of-way when the vehicle is parked in violation of a temporary or permanent parking restriction. PCC 16.30.220B provides that an authorized officer may tow a vehicle, without notice, when the vehicle is illegally parked in a conspicuously posted restricted space.

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

The Hearings Officer finds that Parking Enforcement placed signs in SW Osage that on November 30, 2012 at 2:18 p.m. The Hearings Officer finds that the temporary no parking signs indicating a temporary parking restriction for December 3, 2012. The Hearings Officer finds Mr. Mehaffy credible, and finds that on December 1, 2012 when he left his vehicle on the roadway he did not find temporary no parking signs conspicuously posted on the block face. The Hearings Officer finds that Parking Enforcement has failed to submit sufficient evidence to counter Mr. Mehaffy's testimony about the placement of the temporary no parking signs and/or to prove that the signs were properly placed on November 30, 2012. The Hearings Officer finds that Parking Enforcement has failed to meet its burden with respect to the tow of Mr. Mehaffy's vehicle on December 3, 2012. The Hearings Officer finds the tow of Mr. Mehaffy's vehicle is not valid.

**Order:**

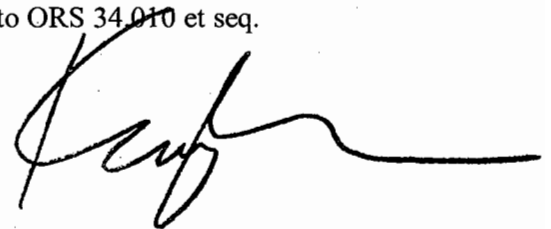
Therefore, the Hearings Officer finds that the owner or other persons who have an interest in the vehicle are not liable for the towing and/or storage charges. Therefore, it is ordered that the vehicle shall be immediately released, if still held, and any money heretofore paid for towing and/or storage charges shall be returned to the vehicle owner.

**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 January 28, 2013.**

**The appeal has been withdrawn at the request of the appellant.**

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

Dated: December 28, 2012  
KMG: c2/m2



Kimberly M. Graves, Hearings Officer

Enclosure

Bureau: Parking Enforcement  
Tow Number: 19117

<b>Exhibit #</b>	<b>Description</b>	<b>Submitted by</b>	<b>Disposition</b>
1	Tow Hearing Request Form	Mehaffy, Michael West	<u>Received</u>
1a	Letter	Mehaffy, Michael West	<u>Received</u>
2	Tow Desk printout	Hearings Office	<u>Received</u>
3	Notice of Hearing	Hearings Office	<u>Received</u>
4	Statement of Rights and Procedures	Hearings Office	<u>Received</u>
5	Tow Hearing Report	Parking Enforcement	<u>Received</u>
6	Parking Violation	Parking Enforcement	<u>Received</u>