

Date September 12, 2011

PUBLIC HEARING ON VEHICLE IMPOUND OF KEVIN NEUWIRTH

WHEREAS, Kevin Neuwirth, 2920 Kinsey Avenue, filed an appeal of his vehicle's impound for leaving the vehicle in the traveled portion of the roadway on March 31, 2011, and the City Hearing Officer denied said appeal; and

WHEREAS, Mr. Neuwirth has requested an opportunity to address the City Council on the matter of his appeal; and

WHEREAS, Mr. Neuwirth has been provided the opportunity to address the City Council on the matter of his appeal; and

WHEREAS, Mr. Neuwirth's vehicle was found abandoned and illegally parked in the traveled portion of the roadway; NOW, THEREFORE,

BE IT RESOLVED (Choose one of the two alternatives):

Alternative One: That the order of the hearing officer be upheld.

MOVED BY _____ TO UPHOLD DECISION.

Alternative Two: That the order of the hearing officer be reversed and a Certificate of No Probable Cause be issued to Mr. Neuwirth.

MOVED BY _____ TO REVERSE DECISION.

APPROVED AS TO FORM:

Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				

MOTION CARRIED

APPROVED

Mayor

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

City Clerk

EXHIBITS FOR VEHICLE IMPOUND

**Kevin Neuwirth
2920 Kinsey Avenue
Des Moines, IA 50317**

- EXHIBIT 1** **Request for Administrative Hearing
Letter Setting Date of Hearing**

- EXHIBIT 2** **Hearing Officer's Decision**

- EXHIBIT 3** **Appeal Request of Hearing Officer's Decision**

- EXHIBIT 4** **Case Documents
Letter Setting Council Date**

- EXHIBIT 5** **Transcript**

- EXHIBIT 6** **Police Report and Citation**

EXHIBIT 1

EX.1

FILED

City of Des Moines

Request for Administrative Hearing

2011 MAR 31 AM 8:20 (File in the City Clerk's Office within 10 days of mailing of the notice of impoundment)

CITY CLERK
DES MOINES, IA

Please print or type

I hereby request an administrative hearing pursuant to Chapter 114-485.15 of the Municipal Code of the City of Des Moines. This hearing process applies only to vehicles which have been impounded for illegal parking.

My vehicle was impounded on 3/30/11, case number and/or tag number 293987

Reason for appeal: My car broke down less than 2-blocks from where i work.
I ran to work, called my mechanic, got a friend to help and we drove
back (less than 2 blocks) and the car was gone!!!!
I was seperated from the vehicle for about twenty minutes.
This is outrageous!
Ironically, I work directly across the street from G&S which is where the DMPD
calls for towing. There was no reason for the car to be impounded. If the officer
would have given me 5 minutes i would have been there to get the car moved.

I have already spent : 20.00 to the DMPD & 24.00 to G&S

and i have a 30.00 parking ticket. I would like a hearing to have this money


refunded to me and have the parking ticket dismissed

Sincerely, Kevin Neuwirth
TAXPAYER

I understand that my failure to attend my scheduled hearing will be deemed a waiver of my rights to such a hearing.

3/30/11
Date

515-661-0523
Daytime Telephone


Signature

Kevin Neuwirth
Print Name

2920 Kinsey Avenue
Address

Des Moines Iowa 50317
City/State/Zip

Attach to this form a copy of the customer's invoice for the towing charge. You may also provide copies of maps, drawings, or photographs which support your case.

Caution: Any statement made on this form may constitute an admission on your part.

Return the white copy of this form to the City Clerk's Office, 409 Robert D. Ray Dr., Des Moines, IA 50309. Retain the yellow copy for your files. If you have any questions, call 283-4209.

INVOICE

G & S Service, Inc/City Wide Towing

4100 E 16th Street
Des Moines, IA 50313
(515) 276-8068 Fax (515) 276-9256

Invoice # 13776

Date In: 3/30/2011
Date Out: 3/30/2011

PO #: 11-9257
Released by:

Invoice Date: 3/30/2011
Tow Tag #

Customer Information:
Released to:

Vehicle Information:

Tow Information:

Year: 1996
Make: Pontiac
Model: Grand Am
Color: Red
Lic #: 837 TPL
VIN: 1G2NE52M4TC741330
Odometer:
Owner:

Location: 1600 E Aurora
Des Moines,
Cross Street:
Dispatched: 3/30/2011 8:48:54 AM
Arrived: 3/30/2011 8:51:18 AM
Completed: 3/30/2011
Truck Type: Wheel Lift
Agency:

Bill to:

Qty	Description	Price	Extended Price
1	Storage Day(s)	\$3.00	\$3.00
1	DMPD IMPOUND WRECKER	\$20.00	\$20.00
Sales Tax \$1.38		Total	\$24.38

Certification: I the undersigned do hereby certify that I am legally authorized and entitled to take possession of the above described vehicle

Signature _____

Date _____

CITY OF DES MOINES NON-MOVING TRAFFIC VIOLATION NOTICE OF FINE CITATION-COMPLAINT IN THE IOWA DISTRICT COURT FOR POLK COUNTY

Case Number 7055695

Scheduled Violations Office Des Moines, Iowa, City of Des Moines, A Municipal Corporation, Plaintiff vs. Defendant(s) KELOWA JOHN'S RESTAURANT

Defendant did violate the following section of the Municipal Code of the City of Des Moines, Iowa

Address 2920 KANSAS ST

OFFENSE

City Des Moines State Iowa Zip 50317

OVERTIME PARKING AFTER 30 DAYS REMIT ADDITIONAL \$5.00 **FINE \$10**

ILLEGAL PARKING AFTER 30 DAYS REMIT ADDITIONAL \$5.00 **FINE \$15**

HANDICAPPED PARKING SECTION 114-616 FINE: \$100.00 **FINE \$20**

ILLEGAL OFF-STREET PARKING: FINE: \$40.00 AFTER 30 DAYS REMIT ADDITIONAL \$5.00 **FINE \$25**

SECTION 114-361.02 (a) (Without permission) **FINE \$30**

SECTION 114-361.02 (b) (Front yard parking) **FINE \$40**

Vehicle License # 46074M State IA No. 8-11

Color RED Make DAEWOO Year 2000 2 Door 4 Door Truck Van

VIN # (Required) 1GNS32M100204330

The undersigned states that on or about: 3/30/11 at 8:45 AM PM

At or Near: 6000 Park E Des Moines

Offense Handicapped Parking City Code Violation 114-616

In the City of Des Moines Polk County, Iowa.
 In the City of Des Moines Warren County, Iowa.
 (Top copy Clerk's office, Copy #2 Officer, Copy #3&4 Defendant)

Officer's Signature [Signature] I.D. Number 8477

**NOTICE OF IMPOUNDMENT
DES MOINES, IOWA POLICE DEPARTMENT**

IF YOUR VEHICLE AND THE PERSONAL PROPERTY CONTAINED WITHIN, OR PARKED IN VIOLATION OF A CITY ORDINANCE, YOU HAVE A RIGHT, ADMINISTRATIVE HEARING TO DETERMINE WHETHER THERE WAS PROBABABLE CAUSE TO IMPOUND THE VEHICLE. TO EXERCISE THIS RIGHT, YOU MUST FILE A CITY OF DES MOINES HEARING FORM WITH THE CITY CLERK'S OFFICE AT 400 ROBERT D. ROBERTS BLVD. SHOULD YOU REQUEST AN ADMINISTRATIVE HEARING, YOU MUST POST A BOND IN AN AMOUNT SUFFICIENT TO COVER THE IMPOUNDMENT AND STORAGE OF THE VEHICLE. IF AT THE HEARING THERE WAS NO PROBABLE CAUSE TO IMPOUND THE VEHICLE, THE BOND WILL BE RETURNED TO THE CITY TREASURER OF A CERTIFICATE OF NO PROBABLE CAUSE. IF YOU DO NOT REQUEST A HEARING; YOU MAY CLAIM YOUR MOTOR VEHICLE FROM THE TOWING CONTRACTOR UPON PAYMENT OF ALL CHARGES ATTRIBUTABLE TO THE IMPOUNDMENT. THIS IS ONLY A RELEASE, WHICH ENTITLES YOU TO CLAIM YOUR VEHICLE FROM THE TOWING CONTRACTOR. THE VEHICLE AND PERSONAL PROPERTY CONTAINED WITHIN IS NOT CONSIDERED CLAIMED UNTIL ALL CHARGES ARE PAID TO THE TOWING CONTRACTOR. THE ISSUANCE OF THIS RELEASE DOES NOT COVER STORAGE FEES.

THANK YOU

PAID FOR BEING STOPPED
TO AN
12:30PM
00-0002 001
#01723
Impound Fee
CITY OF DES MOINES
Police Department

Mar 30/11
Martha
CLERK
\$20.00
\$20.00
\$20.00

2011 MAR 31 PM 1:10

IMPOUND TAG NUMBER

CASE NUMBER

Tear Here

**PAID
D.M.P.D.**

IMPOUND VEHICLE RELEASE
DES MOINES, IOWA POLICE DEPARTMENT
IMPOUND TOWING CONTRACTOR VEHICLE #02
G&S SERVICES
4100 EAST 16TH STREET
DES MOINES, IOWA 50313
515-276-8068

Vehicles may only be claimed from 6:00 AM to 10:00 PM, Monday through Friday and from 8:00 AM to 4:00

A. CASE NUMBER 11-9257 B. TAG NUMBER 293987

C. MAKE AND MODEL 96 Pont D. LICENSE NUMBER 468 yaa

E. VIN 741338

F. RELEASED BY: 4125 G. DATE RELEASED 30 Mar 11



RELEASING PROPERTY FROM IMPOUNDED MV



G&S SERVICES INC.
4100 EAST 16TH STREET
DES MOINES, IOWA 50313
515-276-9256



SWIFT AUTO PARTS
1720 EAST WASHINGTON AVE.
DES MOINES, IOWA 50316
515-262-8860

Date: 30 Mar 11 0940am

Case No. 11-9257

Tag No. 293987

Please let: Kevin Newirth
obtain personal property from said vehicle.

Make: 96 Pont Year: 1996 Lic#: 468yaa

Specific items taken:

driver lic of state picture
Id from above
veh.

~~_____~~
Signature of person releasing property

4125



EX. 1



June 3, 2011

Kevin Neuwirth
2920 Kinsey Avenue
Des Moines, IA 50317

Re: Administrative Hearing-Vehicle Impound

An administrative hearing has been set for **Monday, July 25, 2011** in the City Council Chambers, south end of the second floor, **City Hall, 400 Robert D. Ray Drive**, at **9:15 A.M.** at which time you will be provided an opportunity to present evidence.

Parking is available on the streets surrounding City Hall--you will need change to pay the parking meters. Please alert the City Clerk's Office when you arrive.

Pursuant to Section 114-485.16 of the Municipal Code, (copy enclosed), you will be given an opportunity to be heard at the hearing.

If you have questions in this regard, please call.

Sincerely,

A handwritten signature in black ink that reads "Diane Rauh". The signature is written in a cursive, flowing style.

Diane Rauh

City Clerk

DR/kh

Enclosure

cc: Hearing Officer
Assistant City Attorney
Staff Notification

EXHIBIT 2

City of Des Moines, Iowa
July 25, 2011 Administrative Hearing

In re:)	
)	
)	
)	DECISION AND ORDER
KEVIN JOHN NEUWIRTH,)	AND
Appellant)	NOTICE OF APPEAL RIGHTS
)	
)	

Kevin John Neuwirth appeared in his own behalf, as the title holder of record of a 1996 red Pontiac Grand Am four door (2011 IA License No. 468YAA). Officer M. Siebert, with the Des Moines Police Department ("DMPD"), appeared on behalf of the City of Des Moines (the "City").

Procedural History

On March 30, 2011, Officer Siebert observed a 1996 red Pontiac Grand Am four door (2011 IA License No. 468YAA) that had been left unattended in the westbound lane of the 1600 block of E. Aurora Avenue in Des Moines, Polk County, Iowa. At approximately 8:40 AM on March 30, 2011, Officer Siebert identified the owner as Kevin John Neuwirth; issued a citation under Section 114-600 of the City of Des Moines Municipal (the "Municipal Code") for parking his vehicle on the public street in a NO PARKING ANYTIME area; and ordered the vehicle and its contents to be impounded. At approximately 8:48 AM on March 30, 2011, G&S Service, Inc/City Wide Towing was dispatched to the scene and at approximately 8:51 AM towed the vehicle in question to impound. At approximately 9:40 AM on March 30, 2011, Mr. Neuwirth's vehicle was released to him after payment of the DMPD impound fee and the towing services storage and impound fees. On March 30, 2011, DMPD informed Mr. Neuwirth of his right to request an administrative hearing to contest the impound of his vehicle provided his request was filed with the City Clerk within 10-days. On March 31, 2011, Mr. Neuwirth's request for an administrative hearing was filed with the City Clerk. On June 3, 2011, the City Clerk sent a letter to Mr. Neuwirth noting his administrative hearing had been scheduled for 9:15 AM on July 25, 2011. The matter was so heard before the Administrative Hearing Officer.

Discussion

The issue is whether there was probable cause for Officer Siebert to impound Mr. Neuwirth's 1996 red Pontiac Grand Am four door (2011 IA License No. 468YAA) on March 30, 2011. Section 114-485.17 of the Municipal Code states:

"[T]he term 'probable cause to impound' shall mean such a state of facts as would lead a person of ordinary care and prudence to believe there was a breach of law for which the vehicle may be removed and impounded under section 114-485.11 of this article.

Furthermore, Section 114-485.11 of the Municipal Code provides:

"The police department . . . may remove and impound vehicles or cause vehicles to be removed and impounded when the vehicles are stopped or parked in violation of this chapter or other city ordinances and, in so doing, may employ such means as are reasonably necessary."

Officer Siebert testified that Mr. Neuwirth's vehicle was seized and impounded because it had been left unattended in the traveled portion of the west bound lane in the 1600 block of E. Aurora Avenue during the morning rush hour. Officer Siebert testified that he had been dispatched to the scene following two separate complaints filed with DMPD Dispatch. Officer Siebert testified that when he first reached the scene he felt the engine and noted that it was cold. Officer Siebert testified there was no note left on the vehicle or contact information. Officer Siebert testified that given the car was left in the roadway he assumed that the car had broken down and the driver most likely would return very soon. Officer Siebert testified that when he responded to the second complaint he found the vehicle still remained. Officer Siebert testified that he thought an hour to an hour and a half had passed since his first observation of the vehicle blocking the west bound lane. Officer Siebert testified that when he returned to the 1600 block the second time he felt compelled to order the vehicle be impounded because it was forcing the west bound traffic to pull out into the east bound lane thereby creating a public safety hazard. Officer Siebert testified that he also issued a citation under Section 114-600 of the Municipal Code, which prohibits parking in an area where no parking is allowed at anytime.

Mr. Neuwirth testified that he is supposed to be at work by 8:00 AM. Mr. Neuwirth testified that the fuel pump was going out on his car and it finally broke down about one half block from work on March 30, 2011; making him late for work. It is noteworthy that Mr. Neuwirth offered no documentation into the record from his employer supporting his tardiness on the day in question. Mr. Neuwirth testified that his employer is located approximately one half block from where his car broke down; noting his employer is located directly across the street from G & S Towing. Mr. Neuwirth testified that he stayed with the car approximately 10-minutes to see if he could get it started since he was so close to work. Mr. Neuwirth testified that he could not get the vehicle running so he walked to work and made a couple phone calls, called his mechanic, talked with his boss requesting time to get his car fixed, recruited a friend to go with him to where the car had broken down, and then discovered it was gone. Mr. Neuwirth testified that when he got back to his office he could see his vehicle behind the barbed wire fence at G&S Towing. Mr. Neuwirth acknowledged that the vehicle either broke down at 8:00 AM or maybe even a few minutes before 8:00 AM. Mr. Neuwirth testified that he had attempted to pull the vehicle over as much as possible when it was dying but acknowledged that it was still in the traveled portion of the roadway because there is a drop off at the edge of the road. Mr. Neuwirth testified that he was still at home at 7:00 AM so there was no way Officer Siebert observed his car blocking the roadway an hour and a half before it was impounded; arguing less than one hour passed between when his car broke down and when it was towed.

Mr. Neuwirth appears to imply that a person should be allowed at least an hour to deal with a broken down vehicle. Furthermore, by Mr. Neuwirth's own testimony he acknowledged it might have been a little before 8:00 AM when his car broke down and the record reflects G & S Towing removed his vehicle from the roadway at 8:51 AM. Therefore, it is found that Mr. Neuwirth had more than a reasonable amount of time to remove his vehicle from the roadway if that had been his top priority. As Officer Siebert testified, Mr. Neuwirth could have pushed the vehicle onto the shoulder and off the traveled portion of the roadway. Mr. Neuwirth could have had G & S Towing bring his car to his employer's parking lot or to his mechanic. Most likely Mr. Neuwirth even carries a cell phone that would have enabled him to get the vehicle removed from the road in an expeditious manner.

But as noted above, the sole issue is whether there was probable cause for Officer Siebert to impound Mr. Neuwirth's 1996 red Pontiac Grand Am four door (2011 IA License No. 468YAA) on March 30, 2011. Officer Seibert testified that: (1) the vehicle was clearly blocking the westbound lane in the 1600 block of E. Aurora, thereby causing a public safety hazard as westbound traffic had to pull into the eastbound lane; (2) it is illegal under the Municipal Code to leave a vehicle unattended in the traveled portion of the public roadway; (3) there was sufficient

room on the shoulder of the roadway where the car could have been driven or pushed thereby abating the hazardous situation; (4) multiple complaints had been filed by other drivers with DMPD dispatch; and (5) no corrective action had been taken to remove the broken down vehicle from the traveled portion of the roadway between when he was first dispatched to the scene and when he was dispatched there a second time.


Decision and Order

By a preponderance of all evidence in the record, it is found that a person of ordinary care and prudence would be led to believe probable cause did exist when Officer Siebert caused Mr. Neuwirth's vehicle and its contents to be impounded. Kevin John Neuwirth is therefore held liable and ordered to pay all charges, costs and fees attributable to the impound and storage of his vehicle, as well as the thirty dollar (\$30) fine for Citation No. 7055695, plus any related late fees.

Right of Appeal

As provided under Section 114-485.18 of the Municipal Code, this decision may be appealed to the City Council by either the department causing the vehicle to be impounded or the registered owner or person having legal entitlement to possession of the impounded vehicle, provided a written notice of appeal is filed with the City Clerk's Office within seven days of this decision. Failure to file a written notice of appeal within such period shall be deemed a waiver of the right to appeal this decision to the City Council.

This written ruling is hereby submitted on this 5th day of August, 2011 in Des Moines, Polk County, Iowa. The City Clerk shall serve copies of this Decision and Order upon each of the parties.



Camille A. Valley
Administrative Hearing Officer

EXHIBIT 3

Rauh, Diane I.

From: Kevin Neuwirth [kneuwirth@theboulderco.com]
Sent: Thursday, August 18, 2011 11:22 AM
To: Rauh, Diane I.
Subject: Appeal

Follow Up Flag: Follow up
Flag Status: Flagged

Hello Diane,

I had my administrative hearing a couple weeks ago, I got the decision in the mail the other day. I am going to appeal it. Do I need to send you anything else?

Thanks, Kevin
661-0523

Kevin Neuwirth

The Boulder Company

Account Manager

Ph: 515-264-8900

Fax : 515-265-5816

Email : kneuwirth@theboulderco.com

EXHIBIT 4

EX. 4



August 24, 2011

Kevin Neuwirth
2920 Kinsey Avenue
Des Moines, IA 50317

Dear Mr. Neuwirth:

On August 18, 2011, I received an email from you, (copy enclosed) requesting to appeal the Administrative Hearing Officer's decision regarding your impounded vehicle.

However, your right to appeal has expired. Section 114-485.18 of the Municipal Code, (copy enclosed) allows 7 days from the date of the decision, (dated August 5th) to request the hearing. However, your request was received 13 days after the date of the ruling, and failure to request the appeal within 7 days is a waiver of your right to appeal. The "Right of Appeal" process was outlined on page 3 of your Decision and Order from the Hearing Officer.

Sincerely,

A handwritten signature in black ink that reads "Diane Rauh". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

Diane Rauh
City Clerk
City of Des Moines

DR:kh
Enclosures

City of Des Moines - Municipal Code

Sec. 114-485.18. Right to appeal hearing officer's decision.

The decision of the hearing officer made pursuant to this article may be appealed to the city council by either the department causing the vehicle to be impounded or the registered owner or person having legal entitlement to possession of the impounded vehicle, provided the department or the registered owner or person having legal entitlement to possession of the impounded vehicle files a written notice of appeal with the city clerk's office within seven days of the hearing officer's decision. Failure to file a written notice of appeal within such period shall be deemed a waiver of the right to appeal the decision of the hearing officer to the city council.

Herzberg, Karen M.

From: Rauh, Diane I.
Sent: Thursday, August 25, 2011 9:07 AM
To: 'Kevin Neuwirth'
Subject: RE: Impounded Vehicle Appeal Request

I asked the City Legal Department to review your request. They have determined that you should be allowed to continue with your appeal before council. You have the option of appearing before the City Council on either September 12th, September 26th or October 10. The meetings start at 4:30 PM and your appeal will be heard after 5:00 PM.

Please let me know, as soon as possible, which date works for you, and I will process the paperwork and send the information to you.

Diane Rauh
City Clerk
City of Des Moines
515-283-4209
515-237-1645 (fax)
dirauh@dmgov.org

-----Original Message-----

From: Kevin Neuwirth [<mailto:kneuwirth@theboulderco.com>]
Sent: Wednesday, August 24, 2011 1:45 PM
To: Rauh, Diane I.
Subject: RE: Impounded Vehicle Appeal Request

This needs to be reviewed, I just received the letter in the mail on the 16th. I have not waived anything.

-----Original Message-----

From: Rauh, Diane I. [<mailto:DIRauh@dmgov.org>]
Sent: Wednesday, August 24, 2011 11:42 AM
To: 'kneuwirth@theboulderco.com'
Subject: Impounded Vehicle Appeal Request

Please see the attached letter and documents. Your request for an appeal was not received within 7 days of the Decision and Ruling, therefore you have waived your right to a hearing.

Diane Rauh
City Clerk
City of Des Moines
515-283-4209
515-237-1645 (fax)
dirauh@dmgov.org

Herzberg, Karen M.

From: Rauh, Diane I.
Sent: Friday, August 26, 2011 4:50 PM
To: 'Kevin Neuwirth'
Subject: RE: Impounded Vehicle Appeal Request

Mr. Neuwirth--the Des Moines City Council meetings are held on Mondays. If you want to participate in your appeal, you must choose one of the Mondays offered and make arrangements to be present at that Council Meeting. If you do not appear, your appeal hearing will be held without your participation and you will be notified of the council's decision.

You must select one of the options given to you, (September 12, September 26th or October 10). If I do not hear from you about your decision before Tuesday, September 6th at 5:00 PM, your hearing will be set for the September 12th Council meeting at 5:00 P.M.

Diane Rauh
City Clerk
City of Des Moines
515-283-4209
515-237-1645 (fax)
dirauh@dmgov.org

-----Original Message-----

From: Kevin Neuwirth [<mailto:kneuwirth@theboulderco.com>]
Sent: Thursday, August 25, 2011 1:36 PM
To: Rauh, Diane I.
Subject: RE: Impounded Vehicle Appeal Request

These dates are all Mondays, I am in Fairfield Iowa every Monday. It will be very difficult for me to be able attend. The factory shutdown 7/25 & 8/1 which allowed me to attend the hearing. The next shutdown is 12/26.
Thanks, Kevin

-----Original Message-----

From: Rauh, Diane I. [<mailto:DIRauh@dmgov.org>]
Sent: Thursday, August 25, 2011 8:07 AM
To: 'Kevin Neuwirth'
Subject: RE: Impounded Vehicle Appeal Request

I asked the City Legal Department to review your request. They have determined that you should be allowed to continue with your appeal before council. You have the option of appearing before the City Council on either September 12th, September 26th or October 10. The meetings start at 4:30 PM and your appeal will be heard after 5:00 PM.

Please let me know, as soon as possible, which date works for you, and I will process the paperwork and send the information to you.

Diane Rauh
City Clerk
City of Des Moines
515-283-4209
515-237-1645 (fax)
dirauh@dmgov.org

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Subject: RE: Impounded Vehicle Appeal Request

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Sent: Wednesday, August 24, 2011 11:42 AM
To: 'kneuwirth@theboulderco.com'
Subject: Impounded Vehicle Appeal Request

Please see the attached letter and documents. Your request for an appeal was not received within 7 days of the Decision and Ruling, therefore you have waived your right to a hearing.

Diane Rauh
City Clerk
City of Des Moines
515-283-4209
515-237-1645 (fax)
dirauh@dmgov.org

EX. 4



August 29, 2011

Kevin Neuwirth
2920 Kinsey Avenue
Des Moines, IA 50317

Dear Mr. Neuwirth:

Mr. Neuwirth--the Des Moines City Council meetings are held on Mondays. If you want to participate in your appeal, you must choose one of the Mondays offered and make arrangements to be present at that Council Meeting. If you do not appear, your appeal hearing will be held without your participation and you will be notified of the council's decision.

You must select one of the options given to you, (September 12, September 26th or October 10th). If I do not hear from you before Tuesday, September 6th at 5:00 P.M., your hearing will be set for the September 12th Council meeting at 5:00 P.M.

Sincerely,

A handwritten signature in black ink, appearing to read "Diane Rauh". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

Diane Rauh
City Clerk

DR:kh

EXHIBIT 5

ADMINISTRATIVE HEARING TRANSCRIPT

July 25, 2011
City v. Neuwirth
Vehicle Impound

HEARING OFFICER CAMILLE VALLEY: Good morning. It is approximately 9:15 a.m. on Monday, July 25, 2011 and my name is Camille Valley and I'm the Administrative Hearing Officer. We're conducting this hearing this morning at the request of Kevin Neuwirth regarding the City's impoundment of his vehicle. Would the City representative please come to the microphone. Clearly state your name and the title of your position with the City of Des Moines.

POLICE OFFICER MARTIN SIEBERT: Yes Your Honor. My name is Martin Siebert. I'm a Police Officer with the City of Des Moines.

HEARING OFFICER CAMILLE VALLEY: Would you please raise your right hand. Do you solemnly swear or affirm the testimony you are about to give is the truth, the whole truth and nothing but the truth?

POLICE OFFICER MARTIN SIEBERT: I do.

HEARING OFFICER CAMILLE VALLEY: Okay. You may proceed and share with me the facts and circumstances of this case.

POLICE OFFICER MARTIN SIEBERT: Initially, Your Honor, I was on March 30, 2011 at approximately 8:45, I was responding for the second time to this reference of complaint on an abandoned motor vehicle that was left abandoned on the traveled portion of the road and that was in the 1600 block of East Aurora. I initially was dispatched there earlier, probably about an hour or hour and one-half before which I checked the vehicle at that time thinking well maybe somebody broke down because it was cold out there and I'd give them the benefit of the doubt to try and either get a tow truck there or they would return possibly if they were out of fuel. So when the citation on the encounter occurred that was the second trip that I was dispatched there to, reference the car. Once again Your Honor, Aurora runs east and west and the vehicle was found on the north side basically it would be the travel portion going west. The vehicle was clearly on the roadway which blocks one of the two lanes so cars had to, that were traveling westbound, had to go into the eastbound lane to clearly get around it.

HEARING OFFICER CAMILLE VALLEY: So it wasn't pulled off to the side or anything?

POLICE OFFICER MARTIN SIEBERT: No ma'am. I checked the vehicle the first time which I believe was right around 7 o'clock which that was on the dispatch schedule when I was initially dispatched. And I believe it was about an hour or hour and one-half before.

HEARING OFFICER CAMILLE VALLEY: So you said 8:40 a.m. so around 7:00?

POLICE OFFICER MARTIN SIEBERT: Yes ma'am. Around 8:45 is the second time I was tripped there and that's when I felt I gave the owner of the vehicle ample time to either get it removed or to get back there to it. There also was no note that was on the windshield showing that the car was broke down or any messages whatsoever. I believe the vehicle was locked if I recall. I believe it was like either maroon or a red Pontiac. But, the vehicle, just like it showed in my report, was in my initial trip it was cold to the touch so it had been sitting there for a while. And then the second time I was dispatched there is when I impounded the vehicle for safe keeping and for blocking the road.

HEARING OFFICER CAMILLE VALLEY: Okay. So actually dispatch sent you out twice.

POLICE OFFICER MARTIN SIEBERT: Yes ma'am.

HEARING OFFICER CAMILLE VALLEY: So they, it wasn't just you following up? It was some additional complaints had come in?

POLICE OFFICER MARTIN SIEBERT: Yes ma'am.

HEARING OFFICER CAMILLE VALLEY: Okay. Anything further?

POLICE OFFICER MARTIN SIEBERT: No ma'am.

HEARING OFFICER CAMILLE VALLEY: Okay. Thank you. Mr. Neuwirth would you come to the microphone and clearly state your name for the record?

KEVIN NEUWIRTH: Kevin Neuwirth.

HEARING OFFICER CAMILLE VALLEY: Okay. Please raise your right hand. Do you solemnly swear or affirm the testimony you are about to give is the truth, the whole truth and nothing but the truth?

KEVIN NEUWIRTH: Yes.

HEARING OFFICER CAMILLE VALLEY: Okay. You may proceed and share with me anything that's relevant.

KEVIN NEUWIRTH: Okay. I was on my way to work that day and it was, I have to be there at 8:00. And the car, the fuel pump was going out. I work about a half a block from where it broke down. It broke down. I was actually late so it was probably around 8:05 to 8:15 when I, it stopped. I lost all power to the car. And it's half a block from where I work. I work directly across the street from G&S Towing at Iowa Fasteners. And, uh, I stayed with the car for probably ten minutes to see if I could get it started cause I was so close to work. I wasn't going to get it started. It wouldn't, it wouldn't, it was turning over but wouldn't catch. So I walked to work and made a couple of phone calls. I called my mechanic and then I had to talk to my boss about, ya know, I'm going to need some time to get my car fixed. And then I got a friend, a friend to help me and then we went out there and it was gone. And I, we went back and I looked across the street and I could see it across the street from my office behind the barb wire fence so.

HEARING OFFICER CAMILLE VALLEY: At G&S Towing?

KEVIN NEUWIRTH: Yes, at G&S Towing. Yeah. So I actually was late for work so the car broke down probably either right at 8:00 or just after 8:00 or maybe a few minutes before 8:00.

HEARING OFFICER CAMILLE VALLEY: Okay. Uh, I'm curious that the dispatch would send somebody out at 7 something if you...

KEVIN NEUWIRTH: Yeah at 7 o'clock I hadn't left the house.

HEARING OFFICER CAMILLE VALLEY: Okay. Was your vehicle left in the middle of the roadway or along the side?.

KEVIN NEUWIRTH: I pulled it over as far as I could. It was still in the lane, but it was, I pulled it because it was dying so I kinda moved it over, but it's not a very good spot on the road and there is like a drop-off you know where the concrete ends. So I kinda slid it over. It was enough room for cars to go through on both lanes. It was a little tight. It was in the road. I was in a hurry to get off the road.

HEARING OFFICER CAMILLE VALLEY: Do you have anything, any records from appearing to work late or anything you'd like to submit into the record?

KEVIN NEUWIRTH: I don't. I don't have anything like that, but I can get that.

HEARING OFFICER CAMILLE VALLEY: Because right now I mean what's been submitted by the police department that's in the record shows the times and everything that they dispatched and everything.

KEVIN NEUWIRTH: Yeah, what are those times? Because the only time I have is, uh, I have that the tow truck was dispatched at 8:48 and arrived at 8:51. That's the only time I have so. Three minutes to basically go half a block to get my car impounded.

HEARING OFFICER CAMILLE VALLEY: Officer Siebert, do you offer anything into the record for times. I haven't had time to really go through everything that's been submitted with the, on behalf of the police department.

POLICE OFFICER MARTIN SIEBERT: Your Honor, the...

HEARING OFFICER CAMILLE VALLEY: You need to come to the microphone please. We do record this for the record. Just for the record, this is Officer Siebert again testifying.

POLICE OFFICER MARTIN SIEBERT: Your Honor I, I don't have the dispatch log, but I know it wasn't at 8 o'clock or before that because I believe it was like 7:15 or 7:30 at the latest. And then my citation can prove at 8:45 so I think Mr. Neuwirth is a little concerned, or confused on the time when he was there with the vehicle because at 8:45 is when I wrote the citation. And as he explained when G&S was dispatched at 8:58 or 8:51

