



Roll Call Number

Agenda Item Number

39

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		

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.

Mayor

City Clerk

EXHIBITS FOR VEHICLE IMPOUND

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

- | | |
|-------------------------|--|
| <u>EXHIBIT 1</u> | Request for Administrative Hearing
Letter Setting Date of Hearing |
| <u>EXHIBIT 2</u> | Hearing Officer's Decision |
| <u>EXHIBIT 3</u> | Appeal Request of Hearing Officer's Decision |
| <u>EXHIBIT 4</u> | Case Documents
Letter Setting Council Date |
| <u>EXHIBIT 5</u> | Transcript |
| <u>EXHIBIT 6</u> | 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

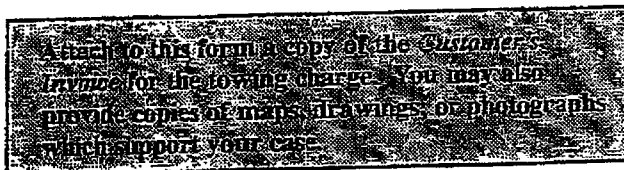
515-661-0523
Daytime Telephone

[Signature]
Signature

Kevin Neuwirth
Print Name

2920 Kinsey Avenue
Address

Des Moines Iowa 50317
City/State/Zip



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	PO #: 11-9257	Invoice Date: 3/30/2011
Date Out: 3/30/2011	Released by:	Tow Tag #
Customer Information:	Vehicle Information:	Tow Information:
Released to:	Year: 1996	Location: 1600 E Aurora Des Moines,
	Make: Pontiac	Cross Street:
	Model: Grand Am	Dispatched: 3/30/2011 8:48:54 AM
	Color: Red	Arrived: 3/30/2011 8:51:18 AM
Bill to:	Lic #: 837 TPL	Completed: 3/30/2011
	VIN: 1G2NE52M4TC741330	Truck Type: Wheel Lift
	Odometer:	Agency:
	Owner:	

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 Name: KENDRA JONES KELLERSON

Address: 2920 KANSAS AVE

City: Des Moines

State: IA Zip: 50317

Vehicle License #: 460-744

Color: Red

Year: 1998

Make: Dodge

Model: Stratus

VIN # (if required): 1C3ANE52MTG244330

Weight: 3000 lbs

Height: 5'10"

Width: 70"

Engine: 2.0L

Transmission: Automatic

Drive: Front Wheel Drive

Registration: 3/50/11

Inspection: 8/45

At or Near: 1600 Park E Des Moines

In the City of Des Moines Polk County, Iowa.

(Top copy Clerk's office, Copy #2 Officer, Copy #34 Defendant)

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

OFFENSE

☐ OVERTIME PARKING

☐ AFTER 30 DAYS REMIT ADDITIONAL \$5.00

☒ ILLEGAL PARKING

☒ AFTER 30 DAYS REMIT ADDITIONAL \$5.00

☐ HANDICAPPED PARKING

☐ SECTION 114-616

☐ FINE: \$100.00

ILLEGAL OFF-STREET PARKING:

FINE: \$40.00

☐ SECTION 114-361.02 (a) (Without permission)

☐ SECTION 114-361.02 (b) (Front yard parking)

☒ SECTION 114-361.02 (b) (Front yard parking)

FINE

☐ \$10

☐ \$15

☐ \$20

☐ \$25

☒ \$30

☐ \$35

☐ \$40

City Code Violation

Officer's Signature

I.D. Number

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 IMPOUNDMENT HEARING FORM WITH THE CITY CLERK'S OFFICE AT 400 ROBERT D. RAYMOND AVENUE, DES MOINES, IOWA 50313. 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, THE CITY CLERK FINDS NO PROBABLE CAUSE TO IMPOUND THE VEHICLE, THE BOND IS TO 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 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 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

CITY OF DES MOINES
Police Department
12:30 PM
00-0002 001
#01723
Impound Fee
\$20.00
Mar 30/11
Martha
CLERK
\$20.00
\$20.00
CASH

2011 MAR 31 PM 1:10

IMPOUND TAG NUMBER

CASE NUMBER

Tear Here

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

PAID
D.M.P.D.

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

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

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

E. VIN 741 338

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

Year:

Pont

Lic#:

468yaa

Specific items taken:

driver lic of state picture
Id from above
veh.

Signature of person releasing property



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 fluid and cursive, with the first name "Diane" and last name "Rauh" clearly distinguishable.

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:

KEVIN JOHN NEUWIRTH,
Appellant

)
)
)
) DECISION AND ORDER
) AND
) 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.

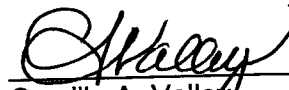
Decision and Order

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 [kneuirth@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 : kneuirth@theboulderco.com

EXHIBIT 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 the first name "Diane" and last name "Rauh" clearly distinguishable.

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

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

From: Kevin Neuwirth [<mailto:kneuirth@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: 'kneuirth@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



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

as he claims so the vehicle was left there longer than he anticipated. And just to reiterate on his comment that the car was not attempted to be pulled off the road plus there is ample room on the shoulder where he could have rolled it off or even pushed it off. The vehicle was clearly blocking the west-bound traffic lane and that's why vehicles had to go around and that's why we were dispatched to it.

HEARING OFFICER CAMILLE VALLEY: Okay. So you're, I'm looking at your vehicle impound recovery report. Is that the one, do you fill that out? I guess your name is at the bottom of that.

POLICE OFFICER MARTIN SIEBERT: Yes ma'am.

HEARING OFFICER CAMILLE VALLEY: And isn't there usually a dispatch time and date on these some place? I'm not seeing anything.

POLICE OFFICER MARTIN SIEBERT: Not on these Your Honor. Usually they have a separate sheet filled out. They will print out and I don't have the e-mail with me. That copy of that was in there. But on my citation which I believe I may have a copy of that which is 7055695.

HEARING OFFICER CAMILLE VALLEY: Yes I do have a copy of that.

POLICE OFFICER MARTIN SIEBERT: Your Honor, over there on the left-hand column right below where that is dark and shaded where the vehicle information is I wrote the date plus the time that I wrote that ticket. That was at 8:45 and that's when I started writing the impound sheet.

HEARING OFFICER CAMILLE VALLEY: Okay. But you'd been there before that time.

POLICE OFFICER MARTIN SIEBERT: Yes, yes ma'am.

HEARING OFFICER CAMILLE VALLEY: All right. Anything else that either one of you want to offer to the record.

POLICE OFFICER MARTIN SIEBERT: No Your Honor.

HEARING OFFICER CAMILLE VALLEY: Okay. Thank you.

KEVIN NEUWIRTH: Yeah. I had left the house, I left the house about 7:45 or 7:50 to be to work at 8:00 that morning, just like every day.

HEARING OFFICER CAMILLE VALLEY: It would be nice to have some documentation from your work showing what time you arrived there that would help support that.

KEVIN NEUWIRTH: Yeah. That's not a problem. I can get that.

HEARING OFFICER CAMILLE VALLEY: Well, today, I mean I just come in for hearings so I'm the objective third party just gathering information so I'm looking at....

KEVIN NEUWIRTH: Maybe they got a call for a different car because, yeah, because I have taken that same route for 13 years.

HEARING OFFICER CAMILLE VALLEY: Okay, but I believe you testified to the red Pontiac, the Grand Am, is that...

KEVIN NEUWIRTH: What was the first time it was, that you got called that the car was there?

POLICE OFFICER MARTIN SIEBERT: Your Honor that was the same vehicle that I had originally made contact with and still in the same location when I responded to it the second time and where the impound was made.

KEVIN NEUWIRTH: When was the first time?

POLICE OFFICER MARTIN SIEBERT: Like I explained it was at least one-half hour or 45 minutes to an hour prior to that Mr. Neuwirth.

KEVIN NEUWIRTH: One-half hour, 45 minutes, about an hour.

POLICE OFFICER MARTIN SIEBERT: Without my documentation from dispatch I can't, but I'm the officer that responded prior to the second time and I gave you ample time to remove that vehicle off the traveled portion of the road. That's why I was dispatched again.

HEARING OFFICER CAMILLE VALLEY: And you left it the first time and didn't write it up because....

POLICE OFFICER MARTIN SIEBERT: I believe, Your Honor, it was pretty cold that day and so taking into consideration to the people whose cars had stalled out and for that traveled portion of the road, I just gave the individual who broke down the opportunity to remove it and even as he said it could have been ten minutes before 8 o'clock and that would still have given him 45 minutes to remove the car especially when he worked across from a tow service who unfortunately impounded his vehicle for me.

HEARING OFFICER CAMILLE VALLEY: Okay. Anything further for anyone? Okay. I know nothing about these cases before I hear them so I will deliberate on the testimony I've heard and the evidence I've received and I'll develop a final written decision. I submit that to the City Clerk's Office and then she'll make sure you get a copy. So I thank you very much for your time and testimony this morning and this case is adjourned.

I, Renae Lampkin, certify that I transcribed the minutes of the July 25, 2011 Administrative Hearing pertaining to the vehicle impound of Kevin Neuwirth.

Renae Lampkin



September 6, 2011

Kevin Neuwirth
2920 Kinsey Avenue
Des Moines, IA 50317

Subject: Appeal of Impound Decision

This letter is a follow-up to my August 29, 2011 correspondence regarding your appeal before the City Council in reference to your vehicle impound.

Accordingly, this matter is scheduled for hearing on September 12, 2011 at 5:00 p.m. in the City Council Chambers, City Hall, 400 Robert D. Ray Drive. A copy of the portion of the City Code pertaining to the appeal process is enclosed for your information. **Failure to appear at the scheduled hearing will be deemed as a waiver of your rights to a hearing.**

A copy of the transcript is enclosed. If you have any questions regarding this matter, please contact this office.

Sincerely,

A handwritten signature in black ink that reads "Diane Rauh". The signature is fluid and cursive, with the first name "Diane" and last name "Rauh" clearly distinguishable.

Diane Rauh
City Clerk

DR:kh
Attach

cc: Assistant City Attorney
Chief Bradshaw

EXHIBIT 6

Ex. 6

2011 MAR 30 PM12:06

VEHICLE IMPOUND / RECOVERY REPORT
DES MOINES, IOWA POLICE DEPARTMENT

1. OWNERS NAME (LAST, FIRST, MIDDLE) NEWLWIRTH, KENNETH, JOHN		2. CASE NUMBER 11-9257	
3. OWNERS ADDRESS 3920 KINSEY		4. RES. PHONE	
5. IMP. TAG NO. 293987		6. DATE / TIME FOUND 30 MARCH 0840	
16. BEAT 202	17. PROPERTY SHEET	18. METHOD OF THEFT - JUMP WIRE, TOWED NONE	
19. KEYS LEFT? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		20. RESULTING DAMAGE OR STRIPPING NONE	
21. GENERAL CONDITION POOR		22. MISSING ACCESSORIES? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> EXPLAIN IN NARRATIVE	
23. ARRESTS OR OFFENSES (1) NO PARKING (2)		24. LICENSE NO. 1055695 STATE / YR IA / 3	
25. IDENT NOTIFIED? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		26. CID NOTIFIED? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
27. CRIME OR OFFENSE NO PARKING ANY TIME		15. CLASSIFICATION	
28. WITNESS		RESIDENCE ADDRESS	
		CITY	
		RES. PHONE	
		BUS. PHONE	

ITEM NO. 27. NARRATIVE: (1) CONTINUATION OF ABOVE ITEM NUMBERS INCLUDING ADDITIONAL INFORMATION AND WITNESSES.
(2) BRIEF DESCRIPTION OF INCIDENT INCLUDING COMPLAINT IF AVAILABLE

THE VEHICLE WAS IMPOUNDED UNDER CITY ORDINANCE 121-600 NO PARKING ANYTIME FINE \$30⁰⁰. THE VEHICLE WAS LEFT ABANDONED ON THE TRAVEL PORTION OF THE HIGHWAY. THE VEHICLE WAS CND TO THE TOWCH VISUAL SEARCH OF VEHICLES INVENTORY SHOWED NOTHING OF VALUE. PHYSICAL CONDITION POOR, BUISC RUST, DAMAGE TO RIGHT FRONT FENDER.


28. REPORTING OFFICER M. SEIBERT		IDENT NO. 847		CONTINUE NARRATIVE ON BACK	
29. SUPERVISOR APPROVING		REVIEWER [Signature]		DISPATCH	
30. INVESTIGATION STATUS <input type="checkbox"/> OPEN <input type="checkbox"/> SUSPENDED <input type="checkbox"/> CLOSED		32. RADIO BROADCAST BY DISPATCHER #		33. DATE	
31. CLEARANCE CLASSIFICATION <input type="checkbox"/> UNFOUNDED <input type="checkbox"/> CLEARED BY ARREST <input type="checkbox"/> EXCEPT CLEARED		35. CANCEL <input type="checkbox"/>		34. TIME	
36. UNIT REFERRED TO: CF		IOWA <input type="checkbox"/>		NCIC <input type="checkbox"/>	

TICKET INFORMATION

Printed By: kmherzberg

Print Date: 09/07/2011

Citation Information

Number:	Issue Date:	Issue Time:	
7055695	03/30/2011	08:45	
Permit:	Permit Type:	Agency Code:	
		DM	
Officer ID:	Officer Name:		
4847	SEIBERT, MARTIN		
ID:	Meter:	Chalk Time:	Route:
		:	
Mark Block:	Street:		
Block:	Street:	Suffix:	Direction:
	1600 BLK E AURORA		
Comment1:		Amount Due:	
IMP# 293987 CASE# 11-9257		\$30.00	
Comment 2:		Date Entered:	
		04/01/2011	
Comment 3:		Comment 4:	

Violation

41 - NO PARKING ANYTIME

User Defined Flag

User Defined

DOT VIN:	1G2NE52M4TC74
User Defined	
MakeModelY:	Pontiac Grand AM
COUNTY:	Polk
INSUR:	

Vehicle Information

License Plate:	State:	Type:	Lic. Year:	Major Color:	Minor Color:
460YAA	IA		03/2011	RED	
Body Style:	Model Year:	VIN:	Make:	Model:	
4D			PONT		

Person Information

Name:	Account_ID:

Finance Activity

Code	Debit	Paid	Action Date	Paid Type	Receipt#	Void
41	\$30.00		03/30/2011			

Status Activity

Clerk	Date	Code	Description
LSMAIN	08/25/2011	APPEAL	ON APPEAL (CODE: 01) Hearing:
lsmain	08/15/2011	APPEAL	DENIED (CODE: 01)
lsmain	04/06/2011	APPEAL	ON APPEAL (CODE: 01) Hearing:

Related People

Name	TitleStart	TitleEnd
Neuwirth, Kevin John,		

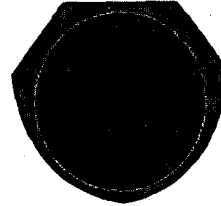
2011-9257

Des Moines Police Department
IMPOUND TOWING COST SHEET

This should be filled out by the tow truck driver providing the service.

Check off service tasks utilized below:

- | | |
|--|---------------------------------------|
| <input checked="checked" type="checkbox"/> | Tow with wrecker \$20.00 |
| <input type="checkbox"/> | Second Tow with a wrecker \$75.00 |
| <input type="checkbox"/> | Towing with a Flatbed \$50.00 |
| <input type="checkbox"/> | Unlocking car doors \$25.00 |
| <input type="checkbox"/> | Winching \$75.00 per hour |
| <input type="checkbox"/> | Unlocking linkage \$25.00 |
| <input type="checkbox"/> | Rehooking \$25.00 |
| <input type="checkbox"/> | Using a dollie \$25.00 |
| <input type="checkbox"/> | Towing semi truck \$175.00 per hour |
| <input type="checkbox"/> | Towing semi trailer \$175.00 per hour |
| <input type="checkbox"/> | Other |



Please list other service tasks below:

837 TPL 1G2NE52M4TL741330

Case Number: 11-9257

Rick

Tow Driver Signature

Location: 1600 E Aurora

Date/Time: 2-30-11

Vehicle Description: Pontiac Grand Am Red

White Copy: Tow Driver

Yellow Copy: Police Officer

QQ.ORI/.LIC/460YAA 223A 20110330 - 08:57:57

PDM1.

LIC/460YAA .LIT/STANDARD

LIT/PC

PRIVATE

OWNER(S)/NEUWIRTH, KEVIN JOHN
2920 KINSEY AVE
DES MOINES IA 50317

VIN/ RED 1996 PONT PONTIAC GRM GRAND AM SE 4D
1G2NE52M4TC741330 AUTOMOBILE USE/REGULAR

VAL CO/POLK NO/460YAA02201201 EXP/02-2012
REGISTRATION DATE/2011-03-29 PREV PLATE/808TDQ
TITLE DATE/2010-11-17 NO/77AI43991 PREV TITLE CO/ NO/

;201103300857/201103300857
PDM1 258
MESSAGE FROM MVR
055716

QQ.ORI/.LIC/460YAA 223A 20110330 - 08:57:56

PDM1.

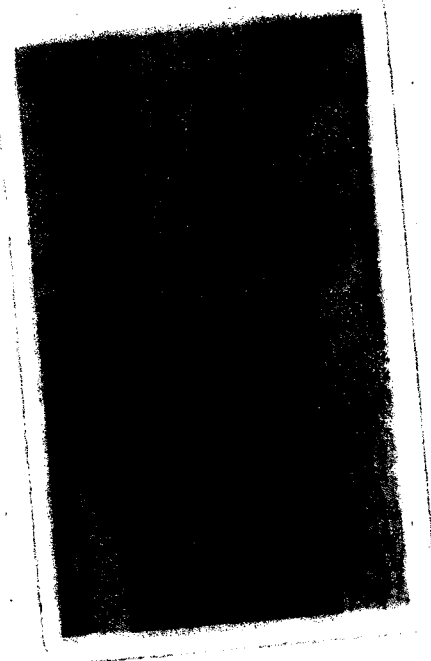
* NO MATCH ON INQUIRY *
LIC/460YAA.LIS/IA

;201103300857/201103300857
PDM1 255
MESSAGE FROM IOWA
055712

QQ.ORI/.LIC/460YAA 223A 20110330 - 08:57:57

1L01PDM1,MRI16ZJ06C
IA0770300
NO RECORD LIC/460YAA LIS/IA

;201103300857/201103300857
PDM1 256
MESSAGE FROM NCIC
055714



IMPOUND MOTOR VEHICLE

Case No. 11-9257 Tag No. 293987
 Property Sheet No. No
 Where Found 1600 E Aurora
 Date 3-30-11 Time 0840
 Color Red Year 96
 Make Pont Body 4dr
 License No. 468XAA
 Serial No. 1G2NE52M4TC741
338 Registered To Kevin Newirth
 Address 2920 Kinsey
 Why Held: Ill. Pkg. ☒ Assn. Traffic ☐
 Stolen Car ☐ Driver in Jail ☐
 Others _____
 Condition Poor
 Towed To QFS
 Officers Seibert

Receipt for Car

Received the above described car

this 30 day of Mar 20 11Sig. of Owner [Signature]Address 2920 Kinsey AveReleased by U/25-1225