



CITY OF
PORTLAND, OREGON
OFFICE OF THE CITY AUDITOR
Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF LEONA E. MCCAFFERY

CASE NO. 1090201

DESCRIPTION OF VEHICLE: Toyota Echo (OR 121CCR)

DATE OF HEARING: September 10, 2009

APPEARANCES:

Ms. Leona E. McCaffery, appellant

HEARINGS OFFICER: Mr. Ian Simpson

The Hearings Officer makes this decision based upon Ms. McCaffery's and Mr. Kenneth Morganstern's testimony and the exhibits received into the evidentiary record (Exhibits 1 through and including 23).

The officers' reports (Exhibits 7 and 9) indicated that the appellant's vehicle had been towed because the driver, Mr. Morganstern, was driving while under the influence of intoxicants. The officers stated that Mr. Morganstern was at the scene of a traffic accident involving the appellant's vehicle and two other vehicles. The accident had been reported at about 5:36 p.m. on August 27, 2009. From Mr. Morganstern the officers learned that Mr. Morganstern had driven the vehicle to a house and parked in the driveway at about 5:20 p.m. on that day. Mr. Morganstern remained in the vehicle with the air conditioner and radio on. The vehicle's battery went dead. Mr. Morganstern attempted to push-start the vehicle in the driveway, but it rolled down the driveway and struck two parked vehicles.

The officers thought Mr. Morganstern appeared dazed and incoherent. His speech was slurred and his eyes were bloodshot and watery, and the pupils were pin points. He was unsteady on his feet, and he said that he had complications from diabetes and it affected his balance. Mr. Morganstern told the officers that he had had a beer earlier in the day, and had taken prescription pain medications. Mr. Morganstern told the officers that he thought he was in an acceptable condition to drive. The officers told him that they were concerned that he was driving the vehicle in the condition he was in.

The appellant testified that she thought the tow was invalid because Mr. Morganstern was not driving it when the accident happened. Mr. Morganstern testified as a witness, and said that he had been trying to roll-start the vehicle when it rolled down the driveway and crashed into the two other vehicles.

The Hearings Officer finds that the City Code authorizes an officer to tow a vehicle if the officer has probable cause to believe that the vehicle's driver has been driving while under the influence of intoxicants. In this case, the Hearings Officer found that Mr. Morganstern told the officers that he had driven the vehicle to the house and

driveway before the accident, and that he had had a beer earlier in the day and had taken pain medications. In addition, the officers reported that Mr. Morganstern appeared intoxicated from his speech, eyes and behavior. The Hearings Officer found that this was a sufficient basis for the officers to have probable cause to believe that Mr. Morganstern was driving under the influence.

The Hearings Officer finds that the tow was valid. Please note the relevant City Code section below.

16.30.220 Towing Without Prior Notice.

(Amended by Ordinance Nos. 165980, 170912, 176352, and 176442, effective May 1, 2002.) Any authorized officer may, without prior notice, order a vehicle towed, when:

K. A police officer has probable cause to believe that the vehicle's operator has committed any of the following offenses:

4. Driving while under the influence of intoxicants (ORS 813.010);

Therefore, it is ordered that all towing and storage charges against the vehicle shall remain the responsibility of the vehicle's owner.

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

Dated: September 14, 2009
IS:rs/cb



Ian Simpson, Hearings Officer

Bureau: Police
Tow Number: 17057

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Hearing request letter	McCaffery, Leona E.	Received
2	Denial letter - case #1090198	McCaffery, Leona E.	Received
3	Envelope addressed to Kenneth Paul Morganstern	McCaffery, Leona E.	Received
4	Tow Desk printout	Hearings Office	Received
5	Hearing Notice	Hearings Office	Received
6	Tow Hearings Process Info. sheet	Hearings Office	Received
7	Oregon Police Traffic Crash Report	Police Records	Received
8	Custody Report	Police Records	Received
9	Special Report	Police Records	Received
10	DUII Interview Report	Police Records	Received
11	Intoxilyzer 8000 Operator's Checklist	Police Records	Received
12	Oregon Drug Influence Evaluation	Police Records	Received
13	Drug Influence Evaluation Narrative	Police Records	Received
14	Breath Test Report	Police Records	Received
15	Breath Test Report	Police Records	Received
16	Driver's license	Police Records	Received
17	Oregon State Police Forensic Services Request	Police Records	Received
18	Notice of Impoundment Towing	Police Records	Received
19	Property/Evidence Receipt	Police Records	Received
20	Photos	Police Records	Received
21	Towed Vehicle Record	Police Records	Received
22	Special Report	Police Records	Received
23	Special Report	Police Records	Received