



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

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**HEARINGS OFFICER'S ORDER**

APPEAL OF GARY W. JACKSON

CASE NO. 1090260

DESCRIPTION OF VEHICLE: Kawasaki Cycle (OR DANGR)

DATE OF HEARING: November 24, 2009

APPEARANCES:

None

HEARINGS OFFICER: Mr. Gregory J. Frank

Mr. Jackson appeared at the Hearings Office, approximately 1 hour prior to the hearing on November 24, 2009 and picked up copies of police reports identified as Exhibits 5 through and including 18. Mr. Jackson informed a Hearings Office employee, after reviewing the above-reference exhibits, that he would not be attending his hearing. Mr. Jackson did not appear at the hearing scheduled for 3:00 p.m. on November 24, 2009. The Hearings Officer makes this decision based upon the documents admitted into the evidentiary record (Exhibits 1-5, 7, 9, and 11 -19); the Hearings Officer did not consider Exhibits 6, 8 and 10 as they related to events occurring after Mr. Jackson's vehicle was ordered towed.

Exhibit 1 is Mr. Jackson's written request for a tow appeal hearing. Mr. Jackson stated, in Exhibit 1, as the reasons that the tow of his vehicle (motorcycle) was not valid, the following:

- There is no proof I was under the influence
- I was not even operating a motor vehicle @ the time
- The vehicle was on private property and was not "parked." It was only standing for time enough for me to plan a route to my daughter's location
- I would have just pushed it to a location safe till I got out of jail later that night.

Exhibit 5, a Custody Report prepared by Police Officer Willard, in summary states that on November 9, 2009, he arrived at "the old Shell gas station" at 92/Division and observed Mr. Jackson standing next to his motorcycle (the vehicle towed and subject to this appeal; the "Motorcycle"). Officer Willard described his observations of Mr. Jackson's behavior including twitching, wiggling non stop, speaking very quickly and difficulty staying on one subject as body language and behavior consistent with "tweaking." Officer Willard stated that Mr. Jackson said that he had been driving the Motorcycle. Officer Willard's Custody Report stated that Mr. Jackson, with consent, performed field sobriety tests (See Exhibit 9). The Field Sobriety Test Report indicates Mr. Jackson had difficulty in performing the tests administered. Officer Willard, during an arrest inventory search, indicated that he discovered a

glass pipe with marijuana residue, a metal pipe, a large syringe for steroids and multiple smaller syringes. Officer Willard stated that Mr. Jackson told him that he had earlier consumed a 24 ounce beer, smoked marijuana and meth.

Exhibit 7, a Special Report prepared by Police Officer Hastings, states that he (Hastings) had contacted a person (Nguyen) that described observations of Mr. Jackson and his behavior. Mr. Nguyen, per the Special Report, described Mr. Jackson as appearing "intoxicated" and saw him "ride his motorcycle from 7-11, located on the NW corner of SE 92<sup>nd</sup> Ave / SE Division St, to the SE corner of that intersection." Officer Hastings stated that when he arrived at Mr. Jackson's location, he observed Mr. Jackson having problems maintaining balance and appearing very "jittery." Officer Hastings further stated, in the Special Report, that he observed Mr. Jackson "contorting his face, sticking his tongue out." Officer Hastings noted, in the Special Report, that his observations were consistent with a person who was under the influence of an illegal narcotic.

The Hearings Officer finds the statements made by Officer Willard and Officer Hastings to be credible. The Hearings Officer finds the statements made by Mr. Jackson to be slightly less credible. The Hearings Officer finds that based upon the observation by Nguyen and the admission (per Officer Willard's Custody Report) that Mr. Jackson had driven, shortly before being contacted by police officers on November 9, 2009, the Motorcycle. The Hearings Officer finds that the descriptions by Officer Willard and Officer Hastings indicate that there was probable cause to believe that Mr. Jackson, on November 9, 2009, was under the influence of intoxicants (includes controlled substances).

The Hearings Officer finds that the Motorcycle was "parked" on private property; a former gasoline service station site. Mr. Jackson stated (Exhibit 1) that "I could have just pushed" the Motorcycle "to a location safe." The Hearings Officer finds it reasonable to infer from such statement that the Motorcycle was not in a "safe" location and therefore it was appropriate to tow the Motorcycle.

Portland City Code section 16.30.220 authorizes a police officer to order a vehicle to be towed, at the owner's expense, without prior notice to the owner if the police officer has probable cause to believe that the vehicle's operator was driving under the influence of intoxicants. The Hearings Officer finds, based upon the evidence in the record of this case, that the police officer who ordered the Motorcycle towed did have probable cause to believe Mr. Jackson drove the Motorcycle under the influence of intoxicants. The Hearings Officer finds that the police officer ordering the Motorcycle towed followed the relevant laws/rules. The Hearings Officer finds the tow of the Motorcycle on November 9, 2009 is valid.

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: November 25, 2009

GJF:rs

  
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Gregory J. Frank, Hearings Officer

Bureau: Police

Tow Number: 22294

## Enclosure

<b>Exhibit #</b>	<b>Description</b>	<b>Submitted by</b>	<b>Disposition</b>
1	Hearing request form w/letter attached	Jackson, Gary W.	Received
1a	Letter	Jackson, Gary W.	Received
1b	Additional letter	Jackson, Gary W.	Received
2	Tow desk printout	Hearings Office	Received
3	Hearing Notice	Hearings Office	Received
4	Tow Hearings Process info. sheet	Hearings Office	Received
5	Custody Report	Police Records	Received
6	Special Report	Police Records	Rejected
7	Special Report	Police Records	Received
8	DMV Implied Consent	Police Records	Rejected
9	Field Sobriety Test Report	Police Records	Received
10	DUII Interview Report	Police Records	Rejected
11	Notice of Impoundment Towing	Police Records	Received
12	Search by Consent	Police Records	Received
13	Intoxilyzer 8000 Operator's Checklist	Police Records	Received
14	Breath Test Report	Police Records	Received
15	Oregon Driver License	Police Records	Received
16	Property/Evidence Receipt	Police Records	Received
17	Property/Evidence Receipt	Police Records	Received
18	Property/Evidence Receipt	Police Records	Received
19	Towed Vehicle Record	Police Records	Received