

CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF BRIDGET TARITA HARTWELL

CASE NO. 1120143

DESCRIPTION OF VEHICLE: Saturn SW1 (WA AHR8635)

DATE OF HEARING: August 9, 2012 and August 16, 2012

APPEARANCES:

None

HEARINGS OFFICER: Ms. Kimberly M. Graves

Ms. Hartwell appeared on August 9, 2012, at the first scheduled hearing ("First Hearing") in this matter. At the First Hearing, Ms. Hartwell requested a reset of the matter so she could contact an attorney. Ms. Hartwell also submitted a handwritten "subpoena duces tecum" to the Hearings Officer requesting production of a number of audio and video records related to her arrest and the tow of her vehicle on August 5, 2012. The Hearings Officer reset the matter to August 16, 2012 at 9:15 a.m., and informed Ms. Hartwell of the new date and time for the hearing ("Second Hearing"). Additionally, a Notice of the Second Hearing date and time was mailed to Ms. Hartwell following the First Hearing. On August 9, 2012, following the First Hearing, a subpoena duces tecum was prepared by the Hearings Office. (Exhibit 19) The subpoena was made available at the front window for Ms. Hartwell to pick up at her convenience and serve on the custodian of the records being sought. Ms. Hartwell was contacted by the Hearings Office staff on August 9, 2012, and told that the subpoena was available for pick up at the Hearings Office. Ms. Hartwell did not pick up the subpoena or contact the Hearings Office between August 9, 2012, and just prior to the start of the Second Hearing on August 16, 2012. On August 16, 2012, at 8:46 a.m. Ms. Hartwell called the Hearings Office and spoke to a member of the staff. Ms. Hartwell informed the staff member that she had "just woken up" and that she had a lump on her neck and was going to the hospital. Ms. Hartwell also indicated that she did not have an appointment with her attorney until next week and she wished to have the hearing continued. Ms. Hartwell was informed that a request to reschedule would need to be in writing, per ADM 9.03, and that the writing could be faxed to the office. Ms. Hartwell was informed that her attorney could submit the request on her behalf, if she was unable to do so. Additionally, Ms. Hartwell was informed that she could appear at the Second Hearing and request to have the matter reset. Ms. Hartwell became upset with the Hearings Office staff member, and ended the phone call. Ms. Hartwell did not appear at the hearing and did not fax a request to have the matter reset to a later date. 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 documents admitted into evidence (Exhibits 1 through and including 19).

Summary of Evidence:

Ms. Hartwell submitted a Tow Hearing Request Form, Exhibit 1, regarding the tow of her vehicle on August 5, 2012, from N. Lombard and NE Martin Luther King Jr. Blvd. Ms. Hartwell has written that she believes the tow of her vehicle is invalid for the following reasons:

"City Agent is not in a place he had a right to be in that the stop is not based on reasonable suspicion. Out of state vehicles are by Oregon state law given 2 week notice to comply in lieu of a tow."

Ms. Hartwell also submitted the above-referenced "subpoena duces tecum" regarding the tow of her vehicle. (Exhibit 17) Ms. Hartwell did not provide any other information about the tow of her vehicle.

The City submitted Exhibits 5 through, and including, 16 for the Hearings Officer's consideration. Exhibit 5 is a Towed Vehicle Record which indicates that Ms. Hartwell's vehicle ("the Vehicle") was towed because it lacked insurance. Exhibit 6 is a Custody Report related to the investigation and arrest of Ms. Hartwell, and the tow of the Vehicle. The Hearings Officer finds only the information related to the stop, questioning regarding insurance information and the tow of the Vehicle to be relevant in this hearing, and does not consider the information related to the arrest of Ms. Hartwell. Page 2 of the report indicates that the Vehicle was stopped after an officer saw Ms. Hartwell make an improper left turn and clocked her speeding over the posted limit. The report indicates that Ms. Hartwell stopped the Vehicle on the "Northeast corner of NE Lombard/NE Martin Luther King Jr. Blvd." The report indicates that the officer asked Ms. Hartwell whether she had insurance for the Vehicle. The report indicates that Ms. Hartwell responded by stating, "Yeah, I have Progressive." but that Ms. Hartwell did not have any documentation to prove that she had valid insurance. The officer indicates that Ms. Hartwell had "obvious clues of impairment" and he was "unable to retain Hartwell's attention for a period of more than 10 seconds." The officer writes that he asked Ms. Hartwell for her driver's license and insurance. The officer writes that he had to remind Ms. Hartwell at least 3 times for her insurance, and that she did not provide any insurance documents. On page 3 of the report the officer indicates that the Vehicle was towed for "being uninsured." Exhibit 7 is a Special Report which again indicates that the Vehicle was towed because it lacked insurance. Exhibit 8 is a Notice of Tow indicating that the Vehicle was being operated in violation of ORS 806.010-Driving Uninsured. Exhibits 10 through, and including, 16 are unrelated to the tow of the Vehicle and are not considered when making this decision.

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 and the Oregon Revised Statutes ("ORS"). ORS 806.011 provides that;

"an unexpired card issued as provided in ORS 742.447, or other current proof of compliance with financial or future responsibility requirements approved by rule by the Department of Transportation, shall be carried in each motor vehicle that is operating in this state . . . Failure of the driver of a motor vehicle to show a valid card or other proof of compliance when asked to do so by a police officer is reasonable grounds for the officer to believe that the person is operating the vehicle in violation of ORS 806.010." (Emphasis added.)

ORS 806.010 indicates that a person commits the offense of driving uninsured if the person operates a motor vehicle without being insured under a motor vehicle liability insurance policy. PCC 16.30.220K1 authorizes an officer to tow a vehicle, without notice, when the officer has probable cause to believe that the vehicle's operator has committed the offense of Driving Uninsured under ORS 806.010.

Findings of Fact and Conclusions of Law:

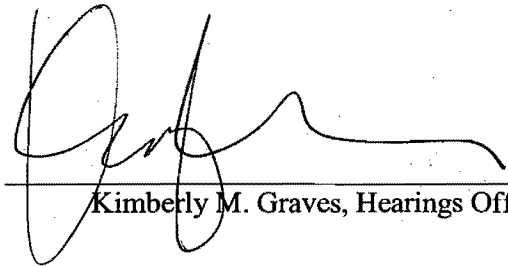
The Hearings Officer finds that on August 5, 2012, Ms. Hartwell was lawfully stopped by a member of the Portland Police Bureau after committing two traffic infractions. The Hearings Officer finds that Ms. Hartwell stopped her vehicle on the NE corner of N Lombard St. and NE Martin Luther King Jr. Blvd in an area where on-street parking is not permitted. The Hearings Officer finds that Ms. Hartwell was unable to provide proof of compliance when asked by a police officer to do so, and that Ms. Hartwell did not have an unexpired insurance card in her vehicle. The Hearings Officer finds that ORS 806.020 provides exceptions to the financial responsibility requirements found in section 806 of the Oregon Revised Statutes. The Hearings Officer finds that none of the exceptions listed in ORS 806.020 apply to Ms. Hartwell. The Hearings Officer finds that Ms. Hartwell's failure to provide proof of valid insurance, after having been asked repeatedly whether she had insurance, gave the officer reasonable grounds to believe that she was operating the vehicle while it was uninsured. The Hearings Officer finds that the totality of the circumstances gave the officer probable cause to believe that the Vehicle was being operated without insurance, and that a tow of the vehicle was proper. The Hearings Officer finds the tow of Ms. Hartwell's vehicle to be valid.

Order:

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: August 16, 2012
KMG:c1/c2



Kimberly M. Graves, Hearings Officer

Enclosure

Bureau: Police
Tow Number: 12083

Exhibit #	Description	Submitted by	Disposition
1	Tow Hearing Request Form	Hartwell, Bridget Tarita	Received
2	Tow Desk printout	Hearings Office	Received
3	Hearing Notice	Hearings Office	Received
4	Notice of Rights and Procedures	Hearings Office	Received
5	Towed Vehicle Record	Police Records	Received
6	Custody Report	Police Records	Received
7	Special Report	Police Records	Received
8	Complaints	Police Records	Received
9	Notice of Tow	Police Records	Received
10	DMV Implied Consent Combined Report	Police Records	Received
11	Intoxilyzer 8000 Operator's Checklist	Police Records	Received
12	Breath Test Report	Police Records	Received
13	Field Sobriety Test Report	Police Records	Received
14	DUII Interview Report	Police Records	Received
15	Oregon Drug Influence Evaluation	Police Records	Received
15a	Drug Influence Evaluation Narrative	Police Records	Received

<u>16</u>	<u>Property/Evidence Receipt</u>	<u>Police Records</u>	<u>Received</u>
<u>17</u>	<u>8/9/12 Letter</u>	<u>Hartwell, Bridget Tarita</u>	<u>Received</u>
<u>18</u>	<u>Notice of Hearing</u>	<u>Hearings Office</u>	<u>Received</u>
<u>19</u>	<u>Subpoena Issued By Hearings Officer</u>	<u>Hearings Office</u>	<u>Received</u>