



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

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**HEARINGS OFFICER'S ORDER**

**APPEAL OF DAWN VAILLENCOURT**

CASE NO. 1100066

DESCRIPTION OF VEHICLE: Pontiac GRM (WA 313XDA)

DATE OF HEARING: April 16, 2010

**APPEARANCES:**

Bruce Tarbox, P.C. for Appellant

HEARINGS OFFICER: Mr. Gregory J. Frank

**Findings of Fact and Conclusions of Law:**

Mr. Bruce Tarbox, attorney, appeared at the hearing on behalf of Dawn Vaillencourt. Mr. Tarbox represented, at the hearing, that Ms. Vaillencourt is the owner of the vehicle that was towed and is the subject of this case. Further, Mr. Tarbox represented, at the hearing, that Ms. Vaillencourt's towed vehicle has been released and is no longer in storage. The Hearings Officer makes this decision based upon the argument presented by Mr. Tarbox and the documents admitted into the evidentiary record (Exhibits 1 through and including 29).

Mr. Tarbox argued that there is no evidence in the record to support the validity of the tow of Ms. Vaillencourt's vehicle when considering the court's decision in *Miranda v. City of Cornelius*, 429 F 3d 858 (2005). Mr. Tarbox argued that police reports made part of the record (Exhibits 6 and 8) indicate that Ms. Vaillencourt's vehicle was towed, on April 9, 2010, while parked in the vicinity of SE 117<sup>th</sup>/SE Division Street in Portland, Oregon. Mr. Tarbox argued there is no evidence in the record to suggest that the location where Ms. Vaillencourt's vehicle was parked, prior to being towed, presented a danger to her vehicle or a danger to any other vehicle or pedestrian. Mr. Tarbox argued that there is no evidence in the record to suggest the location where Ms. Vaillencourt's vehicle was parked, prior to being towed, was not a legal parking spot.

The Hearings Officer finds that Mr. Tarbox's arguments are persuasive. The Hearings Officer finds no evidence in the record that the location from which Ms. Vaillencourt's vehicle was towed presented a danger to her vehicle or to any other vehicle or person. The Hearings Officer agrees with Mr. Tarbox's argument that there is no evidence in the record that Ms. Vaillencourt's vehicle was illegally parked prior to its being towed. The Hearings Officer finds that the tow of Ms. Vaillencourt's vehicle, on April 9, 2010, was not necessary (per *Miranda v. City of Cornelius*) and therefore, is not valid.

**Order:**

1. The owner or other persons who have an interest in the vehicle are not liable for the towing and/or storage charges.
2. Any money heretofore paid for towing and/or storage charges shall be returned to the vehicle owner.
3. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: April 16, 2010  
GJF:cb

  
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Gregory J. Frank, Hearings Officer

Enclosure

Bureau: Police  
Tow Number: 6398

If a refund has been authorized, it will be sent from the City's Accounts Payable Office. Please allow at least 3 weeks.

Exhibit #	Description	Submitted by	Disposition
1	Letter	Tarbox, P.C., Bruce	Received
1a	Notice of Impoundment - Cited Copy	Tarbox, P.C., Bruce	Received
2	Tow desk printout	Tarbox, P.C., Bruce	Received
3	Hearing notice	Hearings Office	Received
4	Tow hearing info. sheet	Police Bureau	Received
5	Towed vehicle record	Police Bureau	Received
6	Custody & Continuation Report (4 pages) for Wesley Sean Patridge - Engstrom reporting officer	Police Bureau	Received
7	Custody Report for Richard James Vaillencourt - Engstrom reporting officer	Police Bureau	Received
8	Special Report - NonConnect - John Edwards reporting officer	Police Bureau	Received
9	Field Sobriety Test Report for Wesley Sean Patridge	Police Bureau	Received
10	DUII Interview Report for Wesley Sean Patridge	Police Bureau	Received
11	Implied Consent for Wesley Sean Patridge	Police Bureau	Received
12	Intoxilyzer 8000 Operator Checklist for Wesley Sean Patridge	Police Bureau	Received
13	Breath Test Report for Wesley Sean Patridge	Police Bureau	Received
14	2nd Breath Test Report for Wesley Sean Patridge	Police Bureau	Received
15	Field Sobriety Test Report for Richard James Vaillencourt	Police Bureau	Received
16	DUII Interview Report for Richard James Vaillencourt (1 page) - Engstrom reporting officer	Police Bureau	Received
17	DUII Interview Report for Richard James Vaillencourt (2 pages) - Engstrom reporting officer	Police Bureau	Received
18	Implied Consent for Richard James Vaillencourt	Police Bureau	Received
19	Intoxilyzer 8000 Operator Checklist for Richard James Vaillencourt	Police Bureau	Received
20	Breath Test Report for Richard James Vaillencourt	Police Bureau	Received
21	Waiver of Probable Cause Hearing Before a Judge for Richard Vaillencourt	Police Bureau	Received
22	Waiver of Probable Cause Hearing Before a Judge for Wesley Patridge	Police Bureau	Received
23	Notice of Impoundment - Record Copy	Police Bureau	Received
24	Proof of Ownership letter	Hearings Office	Received
25	Letter	Tarbox, P.C., Bruce	Received
26	Washington State Vehicle Registration	Tarbox, P.C., Bruce	Received
27	Release Agreement from PPB	Tarbox, P.C., Bruce	Received
28	Vehicle Release from PPB	Tarbox, P.C., Bruce	Received
29	Copy of receipt	Tarbox, P.C., Bruce	Received