

# CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

## Hearings Office

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## HEARINGS OFFICER'S ORDER

### APPEAL OF ANGELA MARIA MUTO

CASE NO. 1110059

DESCRIPTION OF VEHICLE: Toyota Corolla (OR 611ESG)

DATE OF HEARING: May 19, 2011

### APPEARANCES:

Ms. Angela Maria Muto, Appellant

HEARINGS OFFICER: Ms. Kimberly M. Graves

Ms. Muto appeared at the hearing and testified on her own behalf. 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 testimony of Ms. Muto and the documents admitted into evidence (Exhibits 1 through and including 14).

### Summary of Evidence:

Ms. Muto submitted a Tow Hearing Request Form, Exhibit 1, in which she writes that the tow of her vehicle is a "financial hardship," and the tow was invalid because she was ultimately not charged with Driving Under the Influence of Intoxicants (DUII) which is the reason that she was arrested and unable to drive her vehicle. Ms. Muto appeared at the hearing and directed the majority of her testimony toward the actions of the officer that she believed were unfair or unprofessional. Ms. Muto testified that she has a neurologic disorder which impairs her ability to perform the field sobriety tests that she was asked to perform. Ms. Muto testified that she had drunk two beers prior to driving and was not under the influence when she was stopped. Ms. Muto repeatedly indicated that she believed that because she was not charged with the crime of DUII, it was improper for the officer to have arrested her and to order her car towed. Upon questioning, Ms. Muto testified that the area where she stopped her vehicle was a no parking zone.

The City submitted Exhibits 5 through, and including, 14 for the Hearings Officer's consideration. Exhibit 7 is a copy of a Special Report written by Officer Hefley, in which he indicates that he initiated a traffic stop on April 30, 2011 in the area of NE 12<sup>th</sup> and Davis. Officer Hefley writes that the vehicle did not immediately yield when he signaled the stop, but did eventually stop at NE 11<sup>th</sup> and Lloyd. Officer Hefley's report indicates that he made observations consistent with a driver who is under the influence of intoxicants and ultimately arrested the driver, Ms. Muto, for DUII. Exhibit #14 is a Notice of Tow form completed by the Officer indicating that Ms. Muto's vehicle was towed as a Hazard because it was "blocking traffic lane."

**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. The specific sections of PCC Title 16 that are relevant to this case are found in PCC 16.20.120 Q, PCC 16.30.210 A.2 and PCC 16.30.220 A. PCC 16.20.120 Q states that it is unlawful to park or stop a vehicle in a manner that creates a traffic hazard impeding the safe movement of vehicular or pedestrian traffic. PCC 16.30.210 A.2 states that a vehicle may be towed and held at the expense of the owner or person entitled to possession thereof if the vehicle is in the public right-of-way and the vehicle is parked/stopped unlawfully in a manner that may be hazardous to traffic. PCC 16.30.220 A authorizes a police officer to order a vehicle towed, without prior notice, if the vehicle is impeding or likely to impede the normal flow of vehicular traffic.

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

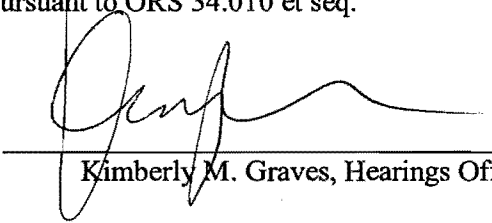
The Hearings Officer finds that on April 30, 2011, Ms. Muto was the subject of a traffic stop which resulted in her arrest. The Hearings Officer finds that whether the District Attorney's office elected to file charges against Ms. Muto for DUII is irrelevant to the issue of whether Ms. Muto's vehicle was properly towed under the Portland City Code. The Hearings Officer finds that Ms. Muto stopped her vehicle near the intersection of NE 11<sup>th</sup> and Lloyd Boulevard, a public right-of-way. The Hearings Officer finds that the area in which Ms. Muto stopped her vehicle is a no parking zone with minimal shoulder space. The Hearings Officer finds that Ms. Muto's vehicle, in the location where it was stopped, created a hazard to other vehicular traffic and was likely to impede the normal flow of vehicular traffic. The Hearings Officer finds the tow of Ms. Muto'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: May 20, 2011  
KMG:jeg/rs

  
Kimberly M. Graves, Hearings Officer

Enclosure

Bureau: Police  
Tow Number: 7898

Exhibit #	Description	Submitted by	Disposition
1	Tow Hearing Request Form	Muto, Angela Maria	Received
2	Tow Desk printout	Hearings Office	Received
3	Hearing Notice	Hearings Office	Received
4	Statement 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	Field Sobriety Test Report	Police Records	Received
9	DUII Interview Report	Police Records	Received
10	Intoxilyzer 8000 Operator's Checklist	Police Records	Received
11	Implied Consent Combined Report	Police Records	Received
12	Breath Test Report	Police Records	Received
13	OR Uniform Citation and Complaint	Police Records	Received
14	Notice of Tow	Police Records	Received