



# CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

## Hearings Office

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## HEARINGS OFFICER'S ORDER

### APPEAL OF ELIZABETH LOWRY

CASE NO. 1120055

DESCRIPTION OF VEHICLE: Dodge R15 (OR 740ASL)

DATE OF HEARING: April 17, 2012

### APPEARANCES:

Ms. Elizabeth Lowry, Appellant

HEARINGS OFFICER: Ms. Kimberly M. Graves

Ms. Lowry 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. Lowry and the documents admitted into evidence (Exhibits 1 through and including 10).

### Summary of Evidence:

Ms. Lowry submitted a Tow Hearing Request Form, Exhibit 1, in which she writes that the police towed her vehicle on March 23, 2012, from NE 68<sup>th</sup> and Mason. Ms. Lowry writes that the police towed her vehicle because it was "un-insured." Ms. Lowry writes that the driver of the vehicle told the police that the current insurance card was in the glove box. Ms. Lowry writes that the police did an "illegal search of the truck" and stated that they found no proof of insurance. Ms. Lowry appeared at the hearing and testified that the vehicle has been insured since she purchased it and the insurance information was in the glove box.

The City submitted Exhibits 7 through, and including, 10 for the Hearings Officer's consideration. Exhibit 7 is a Towed Vehicle record showing that the vehicle was towed for lack of insurance. Exhibit 8 is a Custody Report completed by Officer Snitily. The report indicates that the vehicle was towed on March 23, 2012, from NE 68<sup>th</sup> Avenue and NE Mason. The narrative portion of the report reads, "Refer to custody report with case number 12-24688 for narrative." Exhibit 9 is a Notice of Tow showing again that the vehicle was towed for lack of insurance. Exhibit 10 is a copy of an Oregon Uniform Citation and Complaint which lists two violations. The custody report listed in Exhibit 8 was not submitted by the City.

**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 Ms. Lowry's vehicle was towed on March 23, 2012, for not having insurance. The Hearings Officer finds that Ms. Lowry is credible in her statement that the vehicle was insured on March 23, 2012. The Hearings Officer finds that the City has failed to submit sufficient information to demonstrate whether the officer had reasonable grounds to believe the vehicle was not insured, when he ordered the vehicle towed. The Hearings Officer finds the tow of Ms. Lowry's vehicle to not be valid.

**Order:**

Therefore, the Hearings Officer finds that the owner or other persons who have an interest in the vehicle are not liable for the towing and/or storage charges. Therefore, it is ordered that the vehicle shall be immediately released, if still held, and any money heretofore paid for towing and/or storage charges shall be returned to the vehicle owner.

**In order for the appellant to receive reimbursement, a complete and legible copy of the towing and storage bill, and any receipt for release from the Portland Police Bureau, must be furnished to the Hearings Officer by May 25, 2012. Copies of both receipts may be faxed to the Hearings Office, though a follow-up call to ensure that the documents are legible is recommended.**

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

Dated: April 23, 2012  
KMG:rs

Enclosure

  
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Kimberly M. Graves, Hearings Officer

Bureau: Police  
Tow Number: 4891

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	Tow Hearing Request Form	Lowry, Elizabeth	Received
2	Tow Invoice	Lowry, Elizabeth	Received
3	Letter to Marian Gaylord	Lowry, Elizabeth	Received
4	Tow Desk printout	Hearings Office	Received
5	Hearing Notice	Hearings Office	Received
6	Notice of Rights and Procedures	Hearings Office	Received
7	Towed Vehicle Record	Police Records	Received
8	PPB Custody Report	Police Records	Received
9	Notice of Tow	Police Records	Received
10	Oregon Uniform Citation and Complaint	Police Records	Received