



CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF JOSEPH BRISCO, JR.

CASE NO. 1120135

DESCRIPTION OF VEHICLE: Chevrolet Suburban (OR 332DFD)

DATE OF HEARING: July 26, 2012

APPEARANCES:

Mr. Joseph Brisco, Jr., Appellant

HEARINGS OFFICER: Ms. Kimberly M. Graves

Mr. Brisco, Jr. appeared at the hearing and testified on his 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 Mr. Brisco, Jr. and the documents admitted into evidence (Exhibits 1 through and including 10).

Summary of Evidence:

Mr. Brisco, Jr. submitted Tow Hearing Request Form, Exhibit 1, regarding the tow of his vehicle on July 24, 2012, from Interstate 205. Mr. Brisco, Jr. writes that his vehicle ("the Vehicle") stalled at approximately 12:25 p.m. on Interstate 205 and that he parked the Vehicle with the right wheels in the dirt area next to the roadway. Mr. Brisco, Jr. writes that the Vehicle was at least 4 feet from the lane line at the side of the road. Mr. Brisco, Jr. appeared at the hearing and submitted 2 photos, taken by the towing company, of the Vehicle prior to towing. Exhibit 9 is a view of the front of the Vehicle, and shows the Vehicle parked with a white line passing under the middle of the vehicle. The angle and distance from the Vehicle makes it difficult to determine how the Vehicle is parked in relation to the roadway. Exhibit 10 shows the rear of the Vehicle and shows that the Vehicle is parked with the right wheels parked in the dirt beside the road, and the left wheels parked on the shoulder/emergency lane. Mr. Brisco, Jr. testified that a "Mini Cooper" could have passed in the area between the Vehicle and the white fog line without being on the roadway. Mr. Brisco, Jr. testified that he needed to wait for a friend to return from work to help him retrieve the Vehicle, and that when he returned to retrieve the Vehicle around 5:00 p.m. the vehicle was gone.

The City submitted Exhibits 6 through, and including, 8 regarding the tow of the Vehicle. Exhibit 6 is a fax cover sheet from the Portland Police Bureau. The cover sheet has two hand-written notations on it: "No police report at

this time” and “Only tow record and dispatch log.” Exhibit 7 is a Towed Vehicle Record which indicates that the Vehicle was towed because it was a hazard. Exhibit 8 appears to be a dispatch log from July 25, 2012. The log contains the following information “Tow Request . . . NB I205 NO EB I84, Whi Chev Suburban . . . Hazard/Expedite . . . This is on Pres Motorcade Route an he’s gettg (sic) ready to roll.” The City did not submit any further information about the tow of the Vehicle.

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 and D. 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 16.20.130J prohibits the parking or stopping of vehicles on a shoulder unless a clear and unobstructed traffic lane of the roadway adjacent to the vehicle is left for the passage of other vehicles, and 1) the stopped vehicle is visible from a distance of 200 feet in each direction, or 2) a person, at least 200 feet in each direction, warns approaching motorists of the vehicle. 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. PCC 16.30.220 D permits a police officer to order a vehicle towed, without prior notice, if the vehicle poses an immediate danger to public safety.

Findings of Fact and Conclusions of Law:

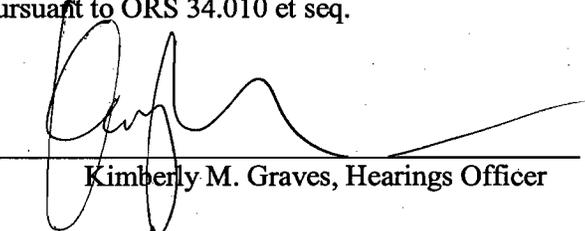
The Hearings Officer finds that on July 25, 2012, the Vehicle was parked along the side of I-205 following a mechanical failure. The Hearings Officer finds that the Vehicle was parked as far off of the roadway as practicable, and that vehicles on the roadway could pass unimpeded. The Hearings Officer finds that the Vehicle was parked along the roadway during daylight hours and would be visible from 200 feet in each direction. The Hearings Officer finds that the Vehicle was not parked in a fashion which was a hazard to vehicular traffic. The Hearings Officer finds that the Vehicle, as parked, was not impeding the *normal* flow of vehicular traffic (emphasis added). The Hearings Officer finds that the Vehicle, as parked, did not pose an immediate danger to *public* safety. (emphasis added) The Hearings Officer understands that the Vehicle was towed in order to ensure the safety of the President of the United States; however, a tow of this nature does not fit within the narrow confines of Title 16 and is therefore invalid.

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.

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

Dated: August 2
KMG:c1/c2



Kimberly M. Graves, Hearings Officer

Enclosure

Bureau: Police
Tow Number: 11562

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	Brisco, Joseph	Received
1a	Diagram	Brisco, Joseph	Received
2	Letter	Brisco, Joseph	Received
3	Tow Desk printout	Hearings Office	Received
4	Hearing Notice	Hearings Office	Received
5	Notice of Rights and Procedures	Hearings Office	Received
6	Towed Vehicle Cover Letter	Police Records	Received
7	Towed Vehicle Record	Police Records	Received
8	Computer printout	Police Records	Received
9	Photo	Brisco, Joseph	Received
10	Photo	Brisco, Joseph	Received