



# CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

## Hearings Office

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## HEARINGS OFFICER'S ORDER

APPEAL OF TARA LYNNE AVRUSKIN

CASE NO. 1120207

DESCRIPTION OF VEHICLE: Honda Accord (OR SL52396)

DATE OF HEARING: November 27, 2012

### APPEARANCES:

Mr. Kenneth Kahn, Attorney for Appellant

Ms. Tara AvRuskin, Appellant

HEARINGS OFFICER: Ms. Kimberly M. Graves

Ms. Avruskin appeared at the hearing with her attorney Mr. Ken Kahn. Mr. Kenan Gibbs testified at the request of Mr. Kahn, and on behalf of Ms. Avruskin. 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. Gibbs and the documents admitted into evidence (Exhibits 1 through, and including, 8, Exhibits 10, 11, 12, 19, 20, 21 and 22).

### Summary of Evidence:

Mr. Kahn made an opening statement on behalf of his client. Mr. Kahn indicated that his client stopped her vehicle at the direction of a police officer. Mr. Kahn stated that the officer told Ms. Avruskin if she called someone to pick her up, that she would only receive a warning. Mr. Kahn stated that Ms. Avruskin told the officer that she was okay to drive, but that she then called Mr. Gibbs to come and get her. Mr. Kahn stated that the officer, Officer Brown, did not tell her that her vehicle would be towed, and only decided to tow the vehicle later into the investigation after becoming upset with Ms. Avruskin. Mr. Kahn stated that when Mr. Gibbs arrived to pick up Ms. Avruskin, the officer would not let him take her home or move her vehicle. Mr. Kahn directed the Hearings Officer's attention to Exhibit 12 in the record. Mr. Kahn indicated that the bottom of page 2 of the report details the conversation the officer had with Ms. Avruskin about calling someone to come and pick her up.

Ms. Avruskin submitted a Tow Hearing Request, Exhibit 3, regarding the tow of her vehicle November 1, 2012. Ms. Avruskin writes that she believes the tow of her vehicle is invalid for the following reason: "In response to police officer request, a 2<sup>nd</sup> licensed driver arrived at the scene before the tow truck arrived to handle the disposition of the vehicle. But the driver was told that it was already decided that the vehicle would be towed instead. There was no justification for not allowing the 2<sup>nd</sup> driver to drive the vehicle to another location." At the

hearing, Mr. Gibbs testified on behalf of Ms. Avruskin. Mr. Gibbs testified that on October 31, 2012, late in the evening, he received a call from Ms. Avruskin indicated that she had been stopped by the police and that she needed to call someone to come and get her. Mr. Gibbs testified that he drove his vehicle to pick up Ms. Avruskin. Mr. Gibbs testified that when he arrived on scene he saw Ms. Avruskin's vehicle and one police vehicle. Mr. Gibbs testified that the tow truck had not yet arrived. Mr. Gibbs testified that he spoke with one of the officers and told him why he was there. Mr. Gibbs testified that the officer told him that it was "too late." Mr. Gibbs testified that he wasn't sure what to do, so he drove around the block before returning to the scene. Mr. Gibbs testified that when he arrived back at the scene the tow truck was just arriving, and he was told by the other officer that he could not take/move Ms. Avruskin's vehicle.

The city submitted Exhibits 6 through, and including, 21 for the Hearings Officer's consideration. The Hearings Officer finds the information contained in Exhibits 9, and 13 through, and including, 18 to be irrelevant and excludes them from the evidentiary record. The Hearings Officer lists now the information contained in the Exhibits which is considered when making this decision. Exhibit 6 is a Towed Vehicle Record indicating that Ms. Avruskin's vehicle was towed because it was believed to be a hazard. Exhibit 10, on page 3, reads "The vehicle was towed due to it being stopped in a No Parking/Tri-Met bus stop area." The portion of Exhibit 12, read by Mr. Kahn is considered relevant and is considered when making this decision. Exhibit 21 is the Notice of Tow indicating again that the vehicle was towed because it was a hazard.

#### **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:**

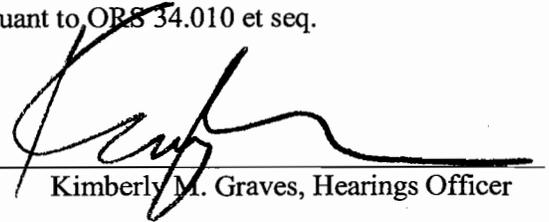
The Hearings Officer finds the testimony of Mr. Gibbs to be credible and finds that Mr. Gibbs arrived on the scene of the traffic stop prior to the arrival of a tow truck. The Hearings Officer finds that Mr. Gibbs was legally able to move Ms. Avruskin's vehicle to a lawful parking place, if he had been given permission to do so by the police officers on scene. The Hearings Officer finds no lawful basis, i.e. evidentiary hold, for why Mr. Gibbs was not permitted to move Ms. Avruskin's vehicle out of the TriMet bus area and into a lawful parking space. The Hearings Officer finds that police officers cannot deliberately, and without a lawful basis, create "hazard" situations by refusing to allow a vehicle to be moved from the roadway. The Hearings Officer finds that the tow of Ms. Avruskin's vehicle is 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: November 29, 2012  
KMG:c2/ml



Kimberly M. Graves, Hearings Officer

Enclosure

Bureau: Police  
Tow Number: 17044

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

<b>Exhibit #</b>	<b>Description</b>	<b>Submitted by</b>	<b>Disposition</b>
1	11/8/12 letter	Kahn, Kenneth E.	Received
2	Tow Desk printout	Hearings Office	Received
3	Tow Hearing Request Form	Avruskin, Tara	Received
4	Notice of Hearing	Hearings Office	Received
5	Statement of Rights and Procedures	Hearings Office	Received
6	Towed Vehicle Record	Police Records	Received
7	Records Request	Police Records	Received
8	Vehicle Release	Police Records	Received
9	Implied Consent Combined Report	Police Records	Rejected
10	Custody Report	Police Records	Received
11	Special Report: 12-096106 (page 1 of 2 only)	Police Records	Received
12	Special Report	Police Records	Received
13	Non-Connect Special Report	Police Records	Rejected
14	Field Sobriety Test Report	Police Records	Rejected
15	DUII Interview Report	Police Records	Rejected
16	Implied Consent Combined Report	Police Records	Rejected
17	Intoxilyzer 8000 Operator's Checklist	Police Records	Rejected
18	Breath Test Report	Police Records	Rejected
19	OR Driver's License	Police Records	Received
20	OR Uniform Citation and Complaint	Police Records	Received
21	Notice of Tow	Police Records	Received
22	Receipts	AvRuskin, Tara	Received