



CITY OF

PORTLAND, OREGON

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Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF CLAYTON CRAFT

CASE NO. 1090300

DESCRIPTION OF VEHICLE: Mazda Miata MX5 (OR 850DKA)

DATE OF HEARING: January 14, 2010

APPEARANCES:

Mr. Matt Markee, Representing Mr. Craft

HEARINGS OFFICER: Mr. Gregory J. Frank

Mr. Matt Markee appeared and represented Mr. Clayton Craft, the owner of the towed vehicle and person who submitted the tow appeal hearing request (Exhibit 1). The Hearings Officer makes this decision based upon the testimony of Mr. Markee and the documents admitted into the evidentiary record (1 through and including 5 and 10 through and including 13). The Hearings Officer notes that Exhibits 6, 7, 8 and 9 are photos that are unreadable and therefore did not consider these exhibits provided credible evidence.

Mr. Markee testified, on December 29, 2009, he was driving Mr. Craft's vehicle on Highway 26 during a snowstorm. Mr. Markee stated that driving conditions were very bad and that for a portion of time Highway 26 was closed on account of the slippery snow conditions. Mr. Markee said that somewhere between the tunnel and the zoo exit he was unable to proceed; the car and/or surrounding traffic made it impossible for him to continue driving. Mr. Markee stated that an ODOT roadside assistance vehicle driver made contact with him and provided aid in pushing Mr. Craft's vehicle from the center lane of Highway 26 to the right side of the roadway. Mr. Markee stated that the location where Mr. Craft's vehicle was initially moved, with assistance from the ODOT driver, was not successful as the vehicle began sliding downhill. The ODOT driver, according to Mr. Markee, assisted once again by pushing the vehicle to the side of the road.

Mr. Markee testified that he asked the ODOT driver if he could contact a tow truck, which was covered by Mr. Markee's insurance, to pick up Mr. Craft's vehicle. Mr. Markee stated that the ODOT driver told him not to request a tow truck. Mr. Markee stated the ODOT driver told him that it would be okay for Mr. Markee to retrieve Mr. Craft's vehicle the next morning, if conditions permitted. Mr. Markee repeated, in his testimony, that he was told two or three times to "not worry, the vehicle would not be towed." Mr. Markee stated he believed Mr. Craft's vehicle was, after the second push, located in a safe location. Mr. Markee expressed concern over the meaning of entries in Exhibit 5.

ODOT submitted four enlarged photos (Exhibits 10 through 13). The photo in Exhibit 10 appears to show Mr. Craft's vehicle on Highway 26. Exhibit 11 is a photo of a "Notice" placed on Mr. Craft's vehicle. Exhibit 12 is a photo showing a license plate matching that of Mr. Craft's vehicle and an attached piece of paper. Exhibit 13 is a photo of a vehicle with a license plate matching Mr. Craft's vehicle and a piece of paper attached to the rear window.

The Hearings Officer finds that the testimony of Mr. Markee, as there is no evidence in the record to the contrary, is credible. The Hearings Officer finds that Mr. Markee was driving Mr. Craft's vehicle on December 29, 2009, and sometime during the evening hours Mr. Markee was unable to drive further on Highway 26 because of the snow conditions existing on the roadway. The Hearings Officer finds that Mr. Craft's vehicle, on December 29, 2009, was pushed (with the assistance of an ODOT driver) towards the side of Highway 26. The Hearings Officer finds that Mr. Markee did have a discussion regarding the towing with the ODOT driver and that it was Mr. Markee's understanding that the vehicle would not be towed if he retrieved it the next morning.

The Hearings Officer finds that photos supplied by ODOT accurately depict the location of Mr. Craft's vehicle on December 30, 2009 at approximately 7:00 a.m. The Hearings Officer finds that Mr. Craft's vehicle, on December 30, 2009, was located with a portion of the vehicle in a traffic lane of Highway 26. The Hearings Officer relied upon Exhibits 10 and 13 in making the decision that Mr. Craft's vehicle was located in the travel lane (showing the right front wheel of Mr. Craft's vehicle "outside" the fog line and the balance of the vehicle in the travel lane).

The Notice (Exhibit 11) noted that Mr. Craft's vehicle was subject to being towed as "disabled, abandoned, parked, or left standing unattended" because the vehicle extended "within the paved portion of the travel lane" and on "any freeway within the city limits of any city in this state." The Hearings Officer finds that the Oregon Statutes ("ORS"), and in particular ORS 819.120, describes when a vehicle is a hazard or obstruction and may be towed immediately. ORS 819.120 (2)(a) describes a vehicle as being a hazard or obstruction if the vehicle is parked "so that any part of the vehicle extends within the paved portion of the travel lane." ORS 819.120 (b) prohibits the parking of a vehicle on a "freeway within the city limits of any city in this state at any time if the vehicle has a gross vehicle weight of 26,000 pounds or less." Oregon Administrative Rules ("OAR") defines "freeway" and describes "travel lane." (OAR 734-020-0147 (1)).

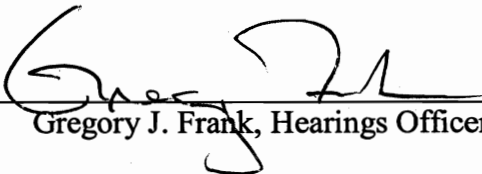
The Hearings Officer finds that Highway 26 is a "freeway" as described in OAR 734-020-0147 (1). The Hearings Officer finds that Mr. Craft's vehicle, on December 30, 2009, was partially in the travel lane of Highway 26; the travel lane being identified with the painted edge line visible in Exhibits 10 and 13. The Hearings Officer finds that Mr. Craft's vehicle, on December 30, 2009, met the definition of a "hazard or obstruction" per ORS 819.120. The Hearings Officer finds that ODOT had the authority, under ORS 819.120, to order a vehicle deemed to be a "hazard or obstruction" towed and held at the owner's expense. The Hearings Officer finds that the order of the tow of Mr. Craft's vehicle on December 30, 2009 is valid.

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 subject to an appeal to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: January 19, 2010

GJF:rs


Gregory J. Frank, Hearings Officer

Bureau: ODOT
Tow Number: 25768

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Hearing request letter	Craft, Clayton	Received
2	Tow Desk printout	Hearings Office	Received
3	Hearing Notice	Hearings Office	Received
4	Fax cover sheet with notes	ODOT	Received
5	Transport Incident Report	ODOT	Received
6	Photo	ODOT	Rejected
7	Photo	ODOT	Rejected
8	Photo	ODOT	Rejected
9	Photo	ODOT	Rejected
10	Photo	ODOT	Received
11	Photo of Notice	ODOT	Received
12	Photo	ODOT	Received
13	Photo	ODOT	Received