



# CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

## Hearings Office

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## HEARINGS OFFICER'S ORDER

APPEAL OF JANET VINGE and HARRIET SCALES

CASE NO. 1120141

DESCRIPTION OF VEHICLE: Suzuki Grand Vitara (OR 025DYW)

DATE OF HEARING: August 21, 2012

### APPEARANCES:

Ms. Janet Vinge, Appellant

HEARINGS OFFICER: Ms. Kimberly M. Graves

Ms. Vinge 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. Vinge and the documents admitted into evidence (Exhibits 1 through and including 14).

### Summary of Evidence:

Ms. Vinge submitted a Tow Hearing Request Form, Exhibit 2, regarding the tow of her vehicle on July 27, 2012. Ms. Vinge attached a number of handwritten pages to Exhibit 2, and writes at length about issues related to criminal conduct associated with the stop of the vehicle but unrelated to the tow of the vehicle. With regard to the tow of the vehicle, Ms. Vinge writes that the officer indicated that the vehicle was being towed for lack of insurance, but when she retrieved the vehicle the tow paperwork indicated that it was towed because it was a hazard. Ms. Vinge writes that under Oregon Revised Statutes ("ORS") 811.560(6) she believes that the vehicle could not be classified as a hazard. Ms. Vinge appeared at the hearing and again raised ORS 811.560(6) as a defense to the tow of the vehicle. Ms. Vinge stated that she was not in the vehicle when it was stopped, and that it was occupied by her son and a friend. Ms. Vinge submitted a number of photos, Exhibit 14, showing where the vehicle was stopped prior to towing. The photos show the intersection of SE 175<sup>th</sup> Pl. and SE Division. Ms. Vinge testified that the vehicle was stopped on SE Division just past the intersection. Ms. Vinge testified that the vehicle was parked on the side of the roadway between the bicycle lane and the curb. Ms. Vinge indicated that the driver of the vehicle had come with her to the hearing, but that he "must have gotten scared" and left.

The Hearings Officer submitted Exhibits 7 through, and including, 11 regarding the tow of Ms. Vinge's vehicle. Exhibit 7 is a Towed Vehicle Record indicating that Ms. Vinge's vehicle was towed because it was a hazard. Exhibit 8 is an Investigation Report written by Officer Espana. The report indicates that a traffic stop was

conducted on July 27, 2012 at SE 176<sup>th</sup> and SE Division. The report indicates that a criminal investigation occurred. Related to the tow of the vehicle the report simply states that the "vehicle was towed." Exhibit 9 is a Notice of Tow. The Notice of Tow indicates that the vehicle was towed because it was a hazard. The officer has written the following regarding the hazard created: "Blocking bicycle lane for EB traffic unable to move because no valid insurance." Exhibits 10 and 11 are unrelated to 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 16.30.210 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.

ORS 811.560 provides that the following exceptions are applicable, as provided under ORS 811.550, (6). When applicable, this subsection exempts vehicles acting in compliance with law or at the direction of a police officer or a traffic control device. ORS 811.550 provides that stopping, standing and parking a vehicle is prohibited in certain locations. ORS 811.550 (23) lists one of the prohibited locations as "on a bicycle lane" subject to the exceptions listed under ORS 811.560.

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

The Hearings Officer finds that that on July 27, 2012, Ms. Vinge's vehicle was the subject of a traffic stop while being driven by someone other than Ms. Vinge. The Hearings Officer finds that the vehicle was stopped along SE Division in an area which has a dedicated bicycle lane. The Hearings Officer finds that the location of the stopped vehicle impeded the flow of traffic through the bicycle lane, and created a hazard to bicycle riders attempted to pass through the area. The Hearings Officer finds that the tow of Ms. Vinge's vehicle is valid.

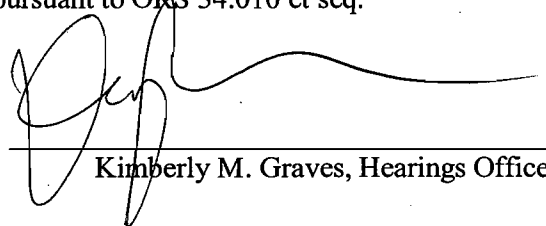
The Hearings Officer notes that ORS 811.560(6) provides an exception for vehicles parked in bicycle lanes at the direction of a police officer. The Hearings Officer notes that the authority for the tow of Ms. Vinge's vehicle arose out of the Portland City Code, and not the ORS, therefore any exceptions listed in the ORS are not applicable to this tow.

**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: August 23, 2012  
KMG:c2

  
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Kimberly M. Graves, Hearings Officer

Enclosure

Bureau: Police  
Tow Number: 11677

<b>Exhibit #</b>	<b>Description</b>	<b>Submitted by</b>	<b>Disposition</b>
1	Cover sheet	Vinge, Janet	Received
2	Tow Hearing Request Form	Vinge, Janet	Received
3	Tow Invoice	Vinge, Janet	Received
4	Tow Desk printout	Hearings Office	Received
5	Notice of Hearing	Hearings Office	Received
6	Notice of Rights and Procedures	Hearings Office	Received
7	Towed Vehicle	Police Records	Received
8	PPB - Investigation Report	Police Records	Received
9	Notice of Tow	Police Records	Received
10	PPB Special Report	Police Records	Received
11	Property / Evidence Receipt	Police Records	Received
12	Request to Reschedule Form	Vinge, Janet	Received
13	Hearing Notice	Hearings Office	Received
14	Photos	Vinge, Janet	Received