

BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO

Appeal No. 18-021

Appeal of
JOSE BADILLO DBA "JOSE'S TOWING LLC,")
Appellant(s))
vs.)
POLICE DEPARTMENT,)
Respondent)

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT on February 15, 2018, the above named appellant(s) filed an appeal with the Board of Appeals of the City and County of San Francisco from the decision or order of the above named department(s), commission, or officer.

The substance or effect of the decision or order appealed from is the REVOCATION on February 14, 2018, of a Tow Car Firm Permit and a Tow Car Operator Permit at 54 Vesta Street.

FOR HEARING ON April 18, 2018

Address of Appellant(s):	Address of Other Parties:
Jose Badillo dba "Jose's Towing LLC," Appellant c/o Thomas LaLanne, Attorney for Appellant Law Offices of Thomas J. LaLanne 400 Harbor Drive Sausalito, CA 94965	N/A



BOARD OF APPEALS

Date Filed:

FEB 21 2018

**CITY & COUNTY OF SAN FRANCISCO
BOARD OF APPEALS**

APPEAL # 18-021

PRELIMINARY STATEMENT OF APPEAL

I / We, Jose Badillo dba "Jose's Towing LLC," hereby appeal the following departmental action: **REVOCATION of Tow Car Firm Permit and Tow Operator Permit** by the **Police Department** which was issued or became effective on: **February 14, 2018**, for the property located at: **54 Vesta Street**.

BRIEFING SCHEDULE:

The Appellant may, but is not required to, submit a one page (double-spaced) supplementary statement with this Preliminary Statement of Appeal. No exhibits or other submissions are allowed at this time.

Appellant's Brief is due on or before: **March 29, 2018, (no later than three Thursdays prior to the hearing date)**, up to 12 pages in length, double-spaced, with unlimited exhibits, with eleven (11) copies delivered to the Board office by 4:30 p.m., and with additional copies delivered to the other parties the same day. In addition, an electronic copy should be emailed to: boardofappeals@sfgov.org if possible. JK

Respondent's and Other Parties' Briefs are due on or before: **April 12, 2018, (no later than one Thursday prior to hearing date)**, up to 12 pages in length, doubled-spaced, with unlimited exhibits, with eleven (11) copies delivered to the Board office by 4:30 p.m., and with additional copies delivered to the other parties the same day. In addition, an electronic copy should be emailed to: boardofappeals@sfgov.org if possible.

Only photographs and drawings may be submitted by the parties at hearing.

Hearing Date: **Wednesday, April 18, 2018, 5:00 p.m., City Hall, Room 416**, One Dr. Carlton B. Goodlett Place.

All parties to this appeal must adhere to the briefing schedule above, however if the hearing date is changed, the briefing schedule MAY also be changed. Written notice will be provided of any change to the briefing schedule.

In order to have their documents sent to the Board members prior to hearing, **members of the public** should submit eleven (11) copies of all documents of support/opposition no later than one Thursday prior to hearing date by 4:30 p.m. Please note that names and contact information included in submittals from members of the public will become part of the public record. Submittals from members of the public may be made anonymously.

Please note that in addition to the parties' briefs, any materials that the Board receives relevant to this appeal, including letters of support/opposition from members of the public, are distributed to Board members prior to hearing. All such materials are available for inspection at the Board's office. You may also request a copy of the packet of materials that are provided to Board members at a cost of 10 cents per page, per S.F. Admin. Code Ch. 67.28.

If you have any questions please call the Board of Appeals at 415-575-6880

The reasons for this appeal are as follows:

See attached statement.

Appellant or Agent (Circle One):

Signature:

Print Name: Thomas J. LaLanne

PRELIMINARY STATEMENT OF APPEAL

Date
Filed:

BOARD OF APPEALS

FEB 21 2018

SUMMARY OF REASONS OR GROUNDS FOR APPEAL CONTINUED:

APPEAL # _____

Jose's Towing has been charged with several violations of the SF Municipal Code. SFPD has provided no evidence of charges or violations. It moved directly to a revocation hearing without Jose's towing being warned of violations or being given a chance to correct violations. My was held with no admissible evidence - only verbal charges by SFPD permit officer. My officer stated her written decision would explain her decision - it does not. The revocation should be overturned since it was made without due process of law.

[Signature]
Attorney for Jose's Towing



EDWIN M. LEE
MAYOR

CITY AND COUNTY OF SAN FRANCISCO
POLICE DEPARTMENT
HEADQUARTERS
1245 3RD Street
San Francisco, California 94158



WILLIAM SCOTT
CHIEF OF POLICE

February 14, 2018

BOARD OF APPEALS

Mr. Jose Badillo
54 Vesta Street
San Francisco, CA 94124

FEB 21 2018

APPEAL # 18-021

RE: Revocation of Tow Firm Permit for Jose's Towing LLC and Tow Operator Permit for Jose Badillo

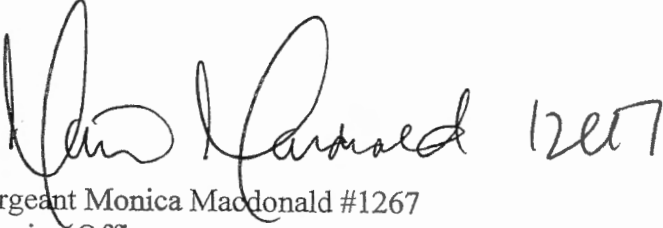
Dear Mr. Badillo,

The purpose of this letter is to memorialize the decision to revoke your permits for tow car operator and tow car firm. It was recommended by the San Francisco Police Department Permit bureau at a public hearing on Wednesday, January 10, 2018, that your permits be revoked. I carefully considered the documents and testimony provided by all parties. The reason for my decision to revoke your application is your failure to comply with the San Francisco Municipal Police Code, including the following:

- (2) The imposition of towing, storage or other charges in excess of the maximum rate established by the City and County of San Francisco for its contracted tow car firms;
- (3) Unauthorized charges added to the tow fee, including use of special equipment, release fees, administrative fees or other charges added to the tow fee;
- (4) The towing or removal of any vehicle from public or private storage in other than a duly authorized manner;
- (6) Employing any person as a tow car operator who has not been issued a valid tow car operator's permit by the San Francisco Police Department;
- (8) Failure to report towed vehicles as required by law and Chief of Police rules;
- (9) Falsification of any document used in the course of business as a tow car firm;
- (10) Failure to take reasonable steps to prevent violations of the law by employees in the course and scope of their employment;

You may appeal my decision with the San Francisco Board of Appeals within 15 calendar days of the decision.

Sincerely,

A handwritten signature in black ink, appearing to read "Monica Macdonald" followed by the number "1267". The signature is fluid and cursive.

Sergeant Monica Macdonald #1267
Hearing Officer
San Francisco Police Department
850 Bryant Street, Room 551
San Francisco, CA 94103

CC: Law offices of Thomas J. LaLanne

LAW OFFICES OF
THOMAS J. LALANNE

FAX (415) 434-1125

400 HARBOR DRIVE
SA USALITO, CALIFORNIA 94965

TELEPHONE (415) 434-1122

March 29, 2018

President Funk and Board Members
Board of Appeals
1650 Mission Street, Suite 304
San Francisco, CA 94103

Re: Jose's Towing LLC vs. San Francisco Police Department
Appeal No. 18-021 for Hearing on April 18, 2018
Tow Car Firm Permit No. 144079
Our File No. 1114

Dear President Funk and Board Members:

Introduction

We represent Jose's Towing LLC and its managing member, Jose Badillo (collectively "Jose's Towing") in this appeal. Jose's Towing seeks to have the termination of its tow car firm permit overturned in its entirety. In the event the Board concludes one or more violations of the Municipal Code sufficient for discipline have occurred, the appropriate remedy would be a suspension for an amount of time commensurate with the offense(s). Imposition of an order terminating the permit was clearly excessive and inappropriate in this circumstance.

Jose's Towing was originally issued a Tow Car Firm permit in 2016. In the time since the issuance of the original permit, Jose's Towing has grown rapidly to a position of prominence in the San Francisco towing industry. Jose's Towing's permit was renewed on July 12, 2017. Less than three months later, the San Francisco Police Department ("SFPD") issued a complaint for revocation or suspension of the permit. See Exhibit 1. The complaint was unexpected, as Jose's Towing had

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THOMAS J. LALANNE

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not been issued a single warning or notice of violation up to that point. The complaint described violations of eight sub-parts of Section 3056 of the San Francisco Municipal Police Code, but contained no information about actions or inactions by Jose's Towing which constituted the violations.

After receipt of the complaint, Jose's Towing contacted Officer Robert Forneris of the SFPD Permit Bureau, the author of the complaint, to ascertain details about the alleged violations. Officer Forneris refused to provide this information. Instead, he referred Jose's Towing to the Municipal Code sections he had cited in the complaint letter, claiming that the code would provide the details they needed. See Exhibit 2.

The hearing was ultimately held on January 10, 2018 before Sergeant Monica Macdonald. At this hearing, all "evidence" against Jose's Towing was provided through oral statements of Officer Forneris and Officer Carlo Roca of the San Francisco California Highway Patrol. All of their statements contained reports and statements of other people. Neither Officer Forneris nor Officer Roca had first-hand knowledge about any of the issues or details about which they spoke. Jose's Towing objected to these hearsay statements, but the hearing officer refused to comment. The hearing was adjourned and continued to February 14, 2018 for an announcement of the hearing officer's decision. This February 14 hearing lasted just minutes. Sergeant Macdonald announced that she had decided to revoke Jose's Towing's permit but gave no reasons for doing so. She stated

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that she would issue a written decision explaining her reasoning within days. Approximately one week later 2018, she issued her written decision. See Exhibit 3.

This written decision is as devoid of facts as the original complaint. In fact, the decision appears to have been copied directly from the complaint, with no attempt at explaining the hearing officer's reasoning, or descriptions of any of the actions of Jose's Towing that constituted the alleged violations. The decision also purported to revoke the Tow Operator permit of Jose Badillo even though the hearing described in the complaint was confined to a review of the Tow Firm permit of Jose's Towing LLC.

Failure to Provide Due Process

All public agencies are obligated to act within constitutionally mandated limits in administering the law. See, e.g., *Jaffe v. Unempl. Ins. App. Bd.* (1984) 156 Cal. App. 3d 719, 723. The constitutional issue most often raised in administrative proceedings is that of procedural due process. Trial before a court is not constitutionally required. An adjudicative (quasi-judicial) proceeding before an administrative officer or board is sufficient as long as basic due process requirements are met, including notice and an opportunity for hearing. See *Blinder, Robinson & Co. v. Tom* (1986) 181 Cal. App.. 3d 283, 289. Adjudicative proceedings involving a constitutionally protected interest, such as the tow permit involved in this proceeding, are held invalid if they provide inadequate modes of notice or hearing. *Petrillo v. Bay Area Rapid Transit Dist.* (1988) 197 Cal. App. 3d 798, 807.

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Jose's Towing acknowledges that it received notice of the time and place of the suspension/revocation hearing, and an opportunity for hearing. However, it finds fault with both the adequacy of the notice and of the hearing officer's decision. *Rosenblit v. Superior Court* (1991) 231 Cal. App. 3d 1434 is instructive on these issues. In *Rosenblit*, the plaintiff doctor had his hospital privileges suspended by the executive board of the hospital in which he practiced, and a hearing was scheduled. The hearing was conducted, and the panel rendered a decision against the doctor without any specific findings. It was determined on appeal that the hospital gave the plaintiff inadequate notice of the charges, denied him access to records, and refused to allow him to question members of the panel on bias. The court went on to state,

“In evaluating whether Hospital provided Rosenblit a fair hearing, the inadequacy of the notice, the refusal to permit copying of medical records, and vagueness of the administrative findings are inextricably related. Having reviewed the cumulative impact of the manner in which Hospital initiated its proceedings, responded to Rosenblit's repeated requests for specificity, and ultimately rendered judgment on his professional competency, we conclude the proceedings had a notable stench of unfairness.” *Rosenblit v. Superior Court, supra*, at p. 1445.

The manner in which the hearing was conducted by the hearing officer was similarly flawed. While the common law or statutory rules governing admissibility of evidence need not be strictly followed, *legally competent evidence* will normally be required to sustain the determination of an administrative body. See, e.g., *Consolidated Edison Co. v. N.L.R.B.* (1938) 305 U. S. 197 [board's orders cannot be justified “without a basis in evidence having rational probative force. Mere uncorroborated hearsay or rumor does not constitute substantial evidence”]. Additionally, the

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determination cannot be based on confidential reports or independent information received by the administrative board and not known to the aggrieved party. He has a right to cross-examine witnesses and produce evidence in refutation. See *Willner v. Committee on Character & Fitness* (1963) 373 U. S. 96 [denial of admission to bar on ex parte statements violates due process].

In this case, due process was clearly not afforded to Jose's Towing by SFPD. Evidence of this claim is provided by the inadequacy of the notice, which failed to identify any specifics about alleged offenses, by reliance solely on hearsay statements to support the decision, and by similar inadequacies in the hearing officer's written decision, which also failed to identify any evidence to support the termination. The tow car permit which is the subject of this hearing is a constitutionally protected property interest that could not be taken from Jose's Towing without the employment of due process by SFPD.

Responses to Alleged Statutory Violations in Complaint

Despite the lack of notice regarding the nature and details of violations alleged against Jose's Towing by SFPD, Jose's Towing will attempt to respond to the charges of each subpart of Section 3056 of the San Francisco Municipal Police Code set forth in the complaint.

(2, 3) Imposition of towing, storage or other charges in excess of the maximum rate established by the City and County of San Francisco for its contracted tow car firms, or unauthorized charges added to the tow fee, including use of special equipment, release fees, administrative fees or other charges added to the tow fee.

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There are presently no published rates for fees and charges within the City and County of San Francisco. Jose's Towing's fees and charges, both for towing and storage, are clearly within industry norms in San Francisco. Its fees and charges are the subject of a published rate sheet. See Exhibit 4. Per the California Tow Truck Association, towing and storage fees are generally established by an agreement between a law enforcement agency requesting the tow and the towing company. All towing done pursuant to request by law enforcement in the City and County of San Francisco is done through Auto Return, and pricing is according to its fee schedule. In the event of a pricing error, Auto Return submits correction spread sheets, and deducts from weekly payments to the tow operator. Any towing done in San Francisco that is not requested by a law enforcement agency is by mutual agreement between the customer requesting a tow service, and/or by contracted rates with their roadside assistance service (e.g., AAA or Allstate). Any other pricing for towing or storage falls under "owner request," which becomes a mutual agreement between Jose's Towing and the customer. Pricing depends upon the situation. If any additional fees are included, they are specified on the towing invoice. There are no hidden fees or charges. Additional fees include any special equipment needed to safely tow vehicles, due to the condition of a vehicle after a severe accident, due to additional time spent at the scene of an accident, or the distance of the tow destination. Administrative fees are only charged when there are payments made by Jose's Towing up front, e.g., payment of release fees from another tow or impound facility. These additional services are only charged with proper paperwork and authorization.

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(4) The towing or removal of any vehicle from public or private storage in other than a duly authorized manner.

Jose's Towing only tows vehicles or vessels within safety limits, and does not exceed the weight or height capacities of its equipment. If Jose's Towing does not have the required equipment, it sub-contracts with another company that does.

(6) Employing any person as a tow car operator who has not been issued a valid tow car operator's permit by the San Francisco Police Department.

Jose's Towing has never knowingly employed a driver in the City and County of San Francisco who was not issued a valid tow car operator's permit by the San Francisco Police Department ("SFPD"). In the specific case of Wilmar Mejia described by Officer Forneris in Exhibit 2, Mr. Mejia was having his own firm permit issues. He asked to work for Jose's Towing while he sorted out his firm permit with the SFPD. Jose's Towing temporarily hired Mr. Mejia to help him out. Mr. Mejia owns his own truck, but while he was driving for Jose's Towing, he was insured under Jose's Towing policy. When the SFPD informed Jose's Towing that it could not hire Mr. Mejia in this manner, Jose's Towing immediately terminated him.

(8) Failure to report towed vehicles as required by law and the Chief of Police rules.

Jose's Towing only tows vehicles that are authorized by contracted law agencies, contracted roadside service, and with the authorization of the owners of vehicles. Vehicles towed for private

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property accounts are immediately called in to corresponding law agencies. Jose's Towing acknowledges that in the last year of operation, it did commit several clerical mistakes in either not reporting or placing a liens on automobiles within allowed times. Jose's Towing struggled for a few months to acquire adequately trained office personnel. It has since discharged its original office staff, and has replaced them with competent and experienced management personnel. This problem has not surfaced since new personnel are in place.

(9) Falsification of any document used in the course of business as a tow car firm.

Jose's Towing asserts that all of its permits are legitimately issued by the City and County of San Francisco. All fees have been paid, and all documentation required to operate it up to speed and within compliance.

(10) Failure to take reasonable steps to prevent violations of the law by employees in the scope of their employment.

Jose's Towing has supplied all of its operators with rules and regulations by which the company operates. It has also instituted regular educational sessions with all employees which address regular operation concerns. Any employee of Jose's Towing who do not abide by the rules will first be reprimanded, and if necessary, terminated.

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Conclusion

Jose's Towing submits that under the circumstances present here, the termination of its tow car firm permit should be overturned. It believes that it is presently in compliance with all conditions of its tow permit. Through voluntary remedial action, changes in operating procedure, and increased training of personnel, any violations have been corrected. In the event the Board concludes that one or more violations of the Municipal Code sufficient for discipline did occur, such violations were minor in nature. The appropriate remedy would be a suspension for an amount of time commensurate with the offense(s).

Very truly yours,

/s/ Thomas J. LaLanne

THOMAS J. LaLANNE

TJL/jdl

cc: Jose's Towing LLC (by email)
San Francisco Police Department

EXHIBIT 1



EDWIN M. LEE
MAYOR

CITY AND COUNTY OF SAN FRANCISCO
POLICE DEPARTMENT
HEADQUARTERS
1245 3RD Street
San Francisco, California 94158



WILLIAM SCOTT
CHIEF OF POLICE

October 4, 2017

Mr. Jose Badillo
54 Vesta St
San Francisco Ca, 94124

RE: Revocation and or suspension Hearing (Permit Granted on 07/12/2017) for 1229 Underwood Ave "Jose's Towing LLC"

Dear Mr. Badillo The purpose of this letter is to inform you of the fact why you are ordered to appear at a revocation and/ suspension permit hearing on November 29, 2017.

It has come to my attention after an investigation that your business "Jose's Towing" is not complying with Article 30.1 and Section 3056 of the San Francisco Municipal Police Code. The reasons cited for your revocation and/or suspension hearing include section 3056 the following sub sections below.

Per Section 3056.

- (2) Imposition of towing storage or other fees in excess of the maximum rate established by the city and county of San Francisco
- (3) Unauthorized charges added to the tow fee, including special equipment, release fee's, administrative fees or other charges added to the tow fee:
- (4) The towing or removal of any vehicle from a public or private area in any manner than other that a duly authorized manner.
- (6) Employing any person as a tow car operator who has not been issued a valid Tow Car operator permit by the San Francisco Police Department.
- (8) Failure to report towed vehicles as required by law and Chief of Police rules.
- (9) Falsification of any document used in the course of business as a tow car firm.
- (10) Failure to take reasonable steps to prevent violations of the law by employees in the scope of their employment.

Due to the above listed facts and after my investigation I believe your business is in violation of Section 3056 article 30 of the San Francisco Police sub sections 2,3,4,6,8,9,10.

The revocation/ and suspension hearing will be conducted on November 29, 2017 at 1pm at 850 Bryant St Rm 551 San Francisco. Failure to appear at this revocation and or suspension hearing may lead to administrative action and or revocation against your permit. Please contact SFPD Permit Bureau at 415-553-1115 if you have any questions.

Sincerely,

San Francisco Police Permit Bureau
850 Bryant St Room 505
San Francisco, CA 94103

EXHIBIT 2

Revocation Violations

Forneris, Rob (POL)

Tue 11/14/2017 12:21 PM

To: Jose Badillo <jose.94110@gmail.com>;

Mr. Badillo, I received your letter this morning regarding your request for more details on each of the alleged violations "Jose's towing" has committed. In the letter I sent by certified mail on October 4th 2017 it lists in detail what the alleged violations are. If you refer to Section 3065 Article 30.1 bullet points 2,3,4,6,8,9,10, You can go to "San Francisco/American Legal Publishing" this will give you details on all the alleged violations in these sections. Also you can come to my office at 850 Bryant St and I will provide a copy to you.

The revocation hearing is designed to discuss any allegation in detail and give you the opportunity to negate any alleged violations. Per Article 30 Section 3063 of the Municipal Police Code, It states ONLY a written notice and brief statement for the basis of the revocation be listed. Also written notice of the date, time, location, and it be received at least 10 days before the hearing. Its been nearly six weeks since I sent the original revocation letter so I believe you have had more than enough time to review any and all allegations against "Jose's Towing." This is an administrative hearing only not a criminal matter.

Also FYI on 11/9/2017 at Harrison St and Harriet St at 13:30hrs I saw Wilmar Mejia driving a flat bed truck with Jose's Towing listed on the sides of the doors. I noticed Mr. Mejia in the drivers seat of the flatbed tow truck. He got out and walked over to me. I asked if he had a valid permit and he said, "Yes I work for Jose's Towing now" and showed me his Tow Car Permit for your company. However when I asked him who's truck he was driving he stated it was his own and not one of your company trucks. Mr. Mejia stated that he frequently uses his truck for towing in the capacity of Jose's towing. You are aware you are obligated to list and disclose all vehicles being used to tow vehicles for your company. This again is a violation of the SFPD Municipal Police Code Section 3052 (3) The make and year model color license number registered owner of every tow car used or operated by the tow firm must be listed.

These are the types of violations you continue to incur. My belief is that you either have no regard for the San Francisco Municipal Police Code or you flaunt the law with no regard for it's consequences. All these issues will be discussed in detail on November 29th at 850 Bryant St at 1pm in Room 551.

Off. Forneris #2106

EXHIBIT 3



EDWIN M. LEE
MAYOR

CITY AND COUNTY OF SAN FRANCISCO
POLICE DEPARTMENT
HEADQUARTERS
1245 3RD Street
San Francisco, California 94158



WILLIAM SCOTT
CHIEF OF POLICE

February 14, 2018

Mr. Jose Badillo
54 Vesta Street
San Francisco, CA 94124

RE: Revocation of Tow Firm Permit for Jose's Towing LLC and Tow Operator Permit for Jose Badillo

Dear Mr. Badillo,

The purpose of this letter is to memorialize the decision to revoke your permits for tow car operator and tow car firm. It was recommended by the San Francisco Police Department Permit bureau at a public hearing on Wednesday, January 10, 2018, that your permits be revoked. I carefully considered the documents and testimony provided by all parties. The reason for my decision to revoke your application is your failure to comply with the San Francisco Municipal Police Code, including the following:

- (2) The imposition of towing, storage or other charges in excess of the maximum rate established by the City and County of San Francisco for its contracted tow car firms;
- (3) Unauthorized charges added to the tow fee, including use of special equipment, release fees, administrative fees or other charges added to the tow fee;
- (4) The towing or removal of any vehicle from public or private storage in other than a duly authorized manner;
- (6) Employing any person as a tow car operator who has not been issued a valid tow car operator's permit by the San Francisco Police Department;
- (8) Failure to report towed vehicles as required by law and Chief of Police rules;
- (9) Falsification of any document used in the course of business as a tow car firm;
- (10) Failure to take reasonable steps to prevent violations of the law by employees in the course and scope of their employment;

You may appeal my decision with the San Francisco Board of Appeals within 15 calendar days of the decision.

Sincerely,

A handwritten signature in black ink, appearing to read "Monica Macdonald" followed by the number "1267". The signature is fluid and cursive.

Sergeant Monica Macdonald #1267
Hearing Officer
San Francisco Police Department
850 Bryant Street, Room 551
San Francisco, CA 94103

CC: Law offices of Thomas J. LaLanne

EXHIBIT 4

Jose's Towing LLC

1229 Underwood Ave.

San Francisco, Ca. 94110 415.310.6350

Towing/Storage/Service Fee's

Service Item	Default	Light	Medium	Heavy	Motorcycle	Trailer	Tractor	Other
Impounds/Storage: Daily Impound Rate	\$150.00	\$150.00	\$175.00	N/A	\$150.00	\$150.00	\$150.00	\$150.00
2ND TOW	\$150.00	\$150.00	\$150.00	N/A	\$150.00	\$150.00	\$150.00	\$150.00
Accident Clean Up/Per Hour/Minimum 1 Hour	\$100.00	\$100.00	\$100.00	N/A	\$100.00	\$100.00	\$100.00	\$100.00
Admin Fee	\$125.00	\$125.00	\$125.00	N/A	\$125.00	\$125.00	\$125.00	\$125.00
COLLISION/ACCIDENT TOW	\$280.00	\$280.00	\$350.00	N/A	\$280.00	\$280.00	\$280.00	\$280.00
Customer Overage/Per Mile	\$15.00	\$15.00	\$15.00	N/A	\$15.00	\$15.00	\$15.00	\$15.00
Dollies	\$100.00	\$100.00	N/A	N/A	\$100.00	\$100.00	\$100.00	\$100.00
Fuel (cost of fuel)/minimum 2 gallons	\$12.00	\$12.00	\$12.00	N/A	\$12.00	\$12.00	\$12.00	\$12.00

Service Item	Default	Light	Medium	Heavy	Motorcycle	Trailer	Tractor	Other
Fuel Delivery Service	\$85.00	\$85.00	\$85.00	N/A	\$85.00	\$85.00	\$85.00	\$85.00
GATE FEE	\$125.00	\$125.00	\$175.00	N/A	\$125.00	\$125.00	\$125.00	\$125.00
Jump Start Service	\$75.00	\$75.00	\$75.00	N/A	\$75.00	\$75.00	\$75.00	\$75.00
Labor	\$100.00	\$100.00	\$100.00	N/A	\$100.00	\$100.00	\$100.00	\$100.00
LIEN CANCEL FEE	\$35.00	\$35.00	\$35.00	N/A	\$35.00	\$35.00	\$35.00	\$35.00
LIEN FEE	\$100.00	\$100.00	\$100.00	N/A	\$100.00	\$100.00	\$100.00	\$100.00
Lockout Service	\$75.00	\$75.00	\$75.00	N/A	N/A	\$75.00	\$75.00	\$75.00
MEDIUM DUTY	\$350.00	\$350.00	\$350.00	N/A	\$350.00	\$350.00	\$350.00	\$350.00
OVER SIZE VEH STORAGE	\$100.00	\$100.00	\$170.00	N/A	\$100.00	\$100.00	\$100.00	\$100.00
PD AND PPI STORAGE RATE	\$85.00	\$85.00	\$85.00	N/A	\$85.00	\$85.00	\$85.00	\$85.00
Private Property Tow	\$250.00	\$250.00	\$250.00	N/A	\$250.00	\$250.00	\$250.00	\$250.00
PULL OUT FEE	\$125.00	\$125.00	\$125.00	N/A	\$125.00	\$125.00	\$125.00	\$125.00

Service Item	Default	Light	Medium	Heavy	Motorecycle	Trailer	Tractor	Other
Special Equipment/Per Hour/Minimum 1 Hour	\$100.00	\$100.00	\$100.00	N/A	\$100.00	\$100.00	\$100.00	\$100.00
Tire Service	\$85.00	\$85.00	\$85.00	N/A	\$85.00	\$85.00	\$85.00	\$85.00
Tow/Hook Fee Roadside	\$50.00	\$50.00	\$50.00	N/A	\$50.00	\$50.00	\$50.00	\$50.00
Winching/ Min 1 Hour Per Hour	\$280.00	\$280.00	\$280.00	N/A				

1 RONNIE M. WAGNER, Esq., SBN 221461
2 SFPD Legal Division/Court Liaison Attorney
3 San Francisco Police Department
4 850 Bryant Street, Room 511
5 San Francisco, California 94103
6 Telephone: (415) 553-1192
7 Facsimile: (415) 553-1370

8 Attorney for San Francisco Police Department

BOARD OF APPEALS

APR 12 2018

APPEAL # 18-021

9 **BEFORE THE CITY & COUNTY OF SAN FRANCISCO**

10 **BOARD OF APPEALS**

11
12 IN THE MATTER OF) Appeal No. 18-021
13)
14 JOSE BADILLO dba)
15 JOSE'S TOWING LLC,) SFPD's Opposition to Appellant
16) Jose Badillo dba Jose's Towing LLC
17 v.) Appeal Brief
18 SAN FRANCISCO POLICE DEPT.)
19)
20) DATE: April 18, 2018
21) TIME: 5:00 p.m.
22) San Francisco City Hall Rm 416
23)
24)
25)

26 **TO THE BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO**

27 **I. INTRODUCTION**

28 On Wednesday, January 10, 2018, an evidentiary hearing was held at the San
29 Francisco Police Department (SFPD), concerning whether to revoke appellant's permits
30 for tow car operator and tow car firm.

31 On February 14, 2018, hearing Officer, Sergeant Monica Macdonald #1267 issued
32 the decision to revoke appellant's permits for tow car operator and tow car firm.

1 On February 14, 2018, SFPD sent appellant a letter memorializing the decision to
2 revoke, and a synopsis of the factual support, presented at the hearing, that led to the
3 decision. Appellant received notice of the hearing. Appellant appeared at the hearing.
4 Appellant had the opportunity to present evidence in support of its opposition to the
5 revocation. Appellant presented evidence, including, but not limited to, making his own
6 statements in support of his opposition to the revocation.

7 **II. NO DENIAL OF APPELLANT'S DUE PROCESS RIGHTS**

8 Citing to Petrillo v. Bay Area Rapid Transit Dist. (1988) 197 Cal. App. 3d 798,
9 appellant contends that he was denied due process, because he had "inadequate modes of
10 notice or hearing." (Appeal at page 3, lines 16-17.)

11 However, appellant acknowledges that he "received notice of the time and place of
12 the suspension/revocation hearing, and an opportunity for hearing." (Appeal at page 4,
13 lines 1, 2.)

14 Nonetheless, appellant argues that the notice and hearing were inadequate.

15 Here, as contrasted with the cited authority upon which appellant relies, in this
16 case, appellant received sufficient notice of the hearing, as well as the opportunity to be
17 heard.

18 Indeed, appellant presented documentary and testimonial evidence at the hearing.
19 Additionally, appellant had the opportunity to respond in testimony to each presentation
20 of evidence adduced in support of the revocation, and did so at great length.

21 Therefore, SFPD disputes the assertion that appellant received inadequate due
22 process in the instant matter.

1 **III. ADMISSIBLE EVIDENCE SUPPORTED THE DECISION**

2 SFPD, through its Hearing Officer, based its decision to revoke upon multiple
3 categories of evidence, each of which supported the alleged violations of S.F.
4 Municipal Police Code section 3056 et seq.:

- 5 (1) Appellant imposed towing, storage, and/or other charges in excess of the
6 maximum rate established by the City & County of San Francisco for its
7 contracted tow car firms. Specifically, SFPD presented evidence at the
8 hearing that appellant grossly exceeded rates published by Auto Return.
9 Additionally, SFPD presented evidence that appellant aggregated
10 unnecessary fees in order further to increase its excessive charges.
- 11 (2) Appellant added unauthorized charges to the tow fee, including use of
12 special equipment, release fees, administrative fees and/or other charges
13 added to the tow fee. The hearing Officer reviewed multiple of
14 appellant’s invoices, each of which document the excessive and inflated
15 fees imposed by appellant.
- 16 (3) Appellant towed or removed vehicles from public or private storage in
17 other than a duly authorized manner. Evidence was presented at the
18 hearing that appellant without solicitation or authorization took vehicles
19 from public roadways, and stored them at his own facility, without
20 notifying the lien-holder, or law enforcement agency. Victim
21 Enterprise, through its representative, Ryan Williams, adduced
22 testimony in support of these alleged violations. Furthermore, SFPD
23 incident report 170-723-942, which documented appellant’s
24 unauthorized vehicle removal and excessive fee imposition, was entered
25 into evidence at the hearing.

1 (4) Appellant employed a person(s) as a tow car operator who has not been
2 issued a valid tow car operator's permit by SFPD. Evidence presented
3 at the hearing demonstrated that SFPD notified appellant via email on
4 November 14, 2017, of the observed violation of S.F. Municipal Police
5 Code section 3056 (6) and (10). SFPD notified appellant in the same
6 email of his observed violation(s) of S.F. Municipal Police Code section
7 3052(3) inasmuch as appellant had failed to notify SFPD that an
8 employee was using his own truck in the course and scope of
9 employment by appellant. Evidence presented showed that SFPD had
10 also notified appellant that he violated S.F. Municipal Police Code
11 section 3052(5) by failing to provide names and permits of all
12 employees operating tow cars for his business. At the hearing, SFPD
13 adduced evidence of multiple and ongoing notifications to appellant of
14 these, and additional violations.

15 (5) Appellant failed to report towed vehicles as required by law, and by the
16 Chief of Police's rules. SFPD incident report number 170-723-942,
17 dated August 31, 2017 was entered into evidence at the hearing. SFPD
18 had provided this incident report to appellant well in advance of the
19 hearing. Moreover, SFPD had provided appellant notice via personal
20 contact, and telephonic communication that appellant was in observed
21 violation of operative law.

22 (6) Appellant falsified documents used in the course of business as a tow car
23 firm. Specifically, appellant's own invoices were entered into evidence
24 and reviewed and considered by the hearing officer in reaching the
25 decision to revoke.

1 (7) Appellant failed to take reasonable steps to prevent violations of law by
2 their employees in the course and scope of employment. SFPD entered
3 into evidence CHP citations, authenticated by the citing Officer, for
4 appellant's employees soliciting tow services at a collision scene, not
5 requested by CHP. (Citation numbers DC59452; QV71168; DN30542.)

6 Written evidence and oral testimony presented at the hearing provided the basis
7 for the hearing Officer's decision to revoke. The decision, and an exposition of the facts
8 on which the decision was based, were set forth in the letter to Appellant of February 14,
9 2018. At the hearing, appellant presented evidence including, but not limited to his own
10 testimony.

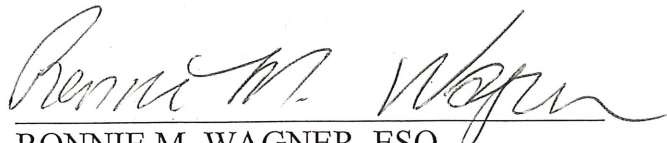
11 Therefore, as the decision was supported by abundant facts, and because appellant
12 was given ample notice and the abundant opportunity to be heard, SFPD opposes the
13 instant Appeal.

14 **IV. CONCLUSION**

15 For all of the foregoing reasons set forth, SFPD respectfully opposes the instant
16 Appeal.
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19 Respectfully submitted,

April 12, 2018

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22 RONNIE M. WAGNER, ESQ.

23 Attorney for SFPD
24 SAN FRANCISCO POLICE DEPARTMENT
25

PROOF OF SERVICE

JOSE BADILLO dba JOSE'S TOWING LLC v. SAN FRANCISCO POLICE DEPARTMENT

City & County of San Francisco Board of Appeals No. 18-021

I, the undersigned SFPD employee, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action.

On April 12, 2018, I served the following document(s):

- SAN FRANCISCO POLICE DEPARTMENT'S OPPOSITION TO APPELLANT JOSE BADILLO dba JOSE'S TOWING LLC'S APPEAL BRIEF**

on the following persons at the locations specified:

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in the manner indicated below:

- X **BY ELECTRONIC MAIL:** I caused a true and correct copy of the above-referenced document to be sent to the recipients at the following e-mail addresses: tom@lalannelaw.com; boardofappeals@sfgov.org

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed April 12, 2018, at San Francisco, California.



Patrick Domin