



THE STATE
of **ALASKA**
GOVERNOR MICHAEL J. DUNLEAVY

Office of the Governor
COMMISSION FOR HUMAN RIGHTS

800 A Street, Suite 204
Anchorage, Alaska 99501-3669
Main: 907.274.4692 / 907.276.7474
TTY/TDD: 711 for Alaska Relay
Fax: 907.278.8588

Ronald Dick
PO Box 6487
Sitka, AK 99835

Brian Hanson
Municipal Attorney, City and Borough of Sitka
100 Lincoln St.
Sitka, AK 99835

RE: *Ronald Dick v. City and Borough of Sitka, Sitka Police Department*
ASCHR No. J-23-001

DETERMINATION

Under the authority of AS 18.80.110-.112, the Alaska State Commission for Human Rights has impartially investigated this complaint and now issues the following determination.

This complaint was timely filed in accordance with 6 AAC 30.230. Respondent is subject to the Commission's jurisdiction, and all other jurisdictional requirements have been met.

Complainant alleges that, due to a disability, he requires the use of an assistive mobile device known as an Other Power Driven Mobility Device (OPDMD). Complainant alleges that on or around May 15, 2022, he had his OPDMD parked in a designated parking spot at the hospital while he attended an appointment. Upon returning to his assistive mobile device, Complainant was blocked in by Respondent's officers who he alleges threatened to arrest him. Respondent's officers also threatened to impound his assistive mobile device if Complainant moved or operated his vehicle on public city streets. Complainant believes Respondent's officers failed to recognize his need to use an OPDMD due to his disability.

Respondent denies Complainant's allegations in part. Respondent does not dispute that Complainant is disabled or that he requires the use of an OPDMD. Respondent denies it blocked or threatened Complainant. Respondent asserts that on May 27, 2022, its officer contacted Complainant in the hospital parking lot because Complainant was operating, or about to operate, a "golf cart" believed by the officer to be unregistered, unlicensed, equipment noncompliant, and use noncompliant, under state and municipal laws, for use on public roadways and walkways. Because Complainant presented as extremely

agitated, the officer called for backup. Complainant was advised not to operate his golf cart on public roadways or walkways and, if contacted doing so, he would be cited, and the golf cart impounded. No citations were issued, as the golf cart was on private property and discretion was applied. Respondent asserts that it has no record of contact on or around May 15, 2022, and Respondent believes Complainant is mistaken and that the contact did occur on May 27, 2022, as documented in notes and recordings of the incident. Respondent asserts that, on the same day, Complainant made an Americans with Disabilities Act (ADA) complaint with Respondent and made several calls to various officials. Respondent's city attorney discussed his complaint with him on May 31, 2022, during which Complainant vehemently objected and complained, in essence, that his rights were being violated under the ADA, which he alleged allows him to drive his golf cart on public roadways and walkways without complying with state and municipal laws. Respondent's city attorney researched the matter and found that the ADA and the U.S. Department of Justice (DOJ) rules governing the use of OPDMDs apply to facilities, public accommodations, trails, parks, walkways, and any place pedestrians are allowed to walk, and it is not intended to apply to public roadways and highways. The rule is intended to apply to areas used by the walking public, not driving public. When its city attorney attempted to convey Respondent's position based on its research of the matter, Complainant threatened that he would sue Respondent and wouldn't have to pay for it. When Respondent encouraged Complainant to seek legal assistance and said it would change its mind if provided any definitive information, Complainant stated they were now adversaries. Respondent asserts that Complainant had also claimed he had a 2018 letter written by a Respondent Lieutenant that gave him permission to drive his golf cart on public roadways as ADA compliant but when asked to provide the letter, Complainant did not do so. Respondent asserts that on June 2, 2022, it received an email from Complainant providing information he believed disputed the city attorney's research, but it was not persuasive. Respondent's city attorney continued to investigate and contacted the ADA information line and confirmed Respondent's position with a DOJ representative. Respondent advised Complainant of the continued efforts and confirmation of its position on June 7, 2022, and it advised Complainant that Respondent would continue to enforce its municipal code if he drives his golf cart on public roadways within the city of Sitka. He was advised of ways to continue to seek redress if still unsatisfied. Respondent further asserts that in March 2022, before the incident with Complainant, the City enacted code regulating All-purpose Vehicles (APVs) like golf carts. The code requires that APVs must be registered with the state, licensed with the municipality, be equipment compliant, and use compliant. On May 27, 2022, Complainant and his golf cart were not compliant with the APV code. Complainant believed he could take his golf cart that is not registered, nor complies with code, onto public roadways and highways. Respondent asserts that Complainant was and is wrong and that he has misinterpreted the ADA.

Investigation produced written statements from a medical provider and a physical therapist prescribing and recommending that Complainant use an OPDMD due to physical limitations that include: *“strength, mobility, and balance deficits”* that *“greatly limit his life activities such as walking, sleeping, caring for himself, performing manual tasks, and working.”* *“His history of severe cervical spinal stenosis has left him with residual weakness and reduced fine motor skills of the upper extremities. He requires assistance to get in and out of a vehicle. He does not have strength or dexterity to open jars, manipulate tools, or small buttons on his clothing. He has impaired balance and coordination from the same condition. In addition to these conditions, he has multiple diagnoses...that contribute to severely reduced range of motion of the upper extremities.”* Because of these severe limitations, both providers recommend an OPDMD and state Complainant has found one that meets his needs, though neither specify what the specific OPDMD is nor whether either provider has documented that they have observed Complainant utilizing it and therefore deemed it safe for the Complainant to operate with his many medical conditions.

Complainant testified to his belief that the ADA and other disability-related laws require Respondent to allow him the use of his *preferred* choice of an OPDMD. While disability laws do provide for a preferred device use, Complainant’s preferred device is a golf cart that he wants to utilize as his primary means of transportation, in the same manner as any other motor vehicle driver, on the roadways of the City and Borough of Sitka. Disability laws require that places of accommodation and government entities shall make reasonable modifications to their policies, practices, or procedures, when and where they can safely do so. Investigation confirmed that such entities are legally permitted to exclude or limit a particular class of OPDMD, especially a golf cart, where such entities can reasonably show that such a class of OPDMD cannot be operated in accordance with legitimate safety requirements enacted by an entity. Investigation found an abundance of evidence to show that is the case here.

First, Complainant alleged and/or testified during investigation, and production of written statements, that Respondent officers blocked him, threatened him with “arrest” and “incarceration” and that its officers “detained” him and refused to read the ADA documents he provided to them upon contact and that he believed would prove to the officers that their actions against him were in error. Careful review of audio and video evidence of the alleged incident found all but one of Complainant’s contentions to be false. Respondent’s officer testified that he was on patrol when he saw the golf cart parked in the parking lot of the hospital. While this officer had not had contact with Complainant previously, he had been briefed on prior incidents regarding Complainant driving his golf cart on public roadways unlawfully. Video evidence clearly showed no license plate visible on the golf cart, which further justified the Respondent’s officer’s traffic stop. Review of the video and audio showed that the officer parked behind Complainant’s two-seater golf cart in such a way that Complainant’s golf cart was

partially blocked by the squad car. Complainant attempted to drive away, but stopped and exited the golf cart approaching the officer and gesticulating rapidly with his arms back and forth, swinging his arms toward the officer and then back toward his golf cart several times. The first minute of the audio is missing, but Complainant's body language is clearly hostile. The officer appears calm and stands in place as Complainant approaches the officer and moves in and out of the officer's body space in an aggressive manner. At exactly one minute the audio engages, and Complainant can be heard yelling at the officer calling him a *"fuck head"* and telling the officer, *"You don't know what you're talking about!"* When the officer says the Complainant needs to calm down, Complainant says, *"I don't either, I don't have to do shit! I don't have to talk to you, I don't have to do anything. Call your boss. Call your boss, you're wrong, or arrest me! One or the other, but don't bother me!"* At no time does the officer threaten to arrest Complainant throughout the duration of what is obviously a traffic stop and not a detainment. The officer asks for Complainant's name and Complainant refuses to provide his name. The officer specifies he is conducting a traffic stop and needs Complainant's name. He also states he will call his boss as Complainant demanded he do. Complainant then states his name for the call to the officer's boss and says he is in his OPDMD, and that the officer needs to leave his ass alone. Complainant states he thinks he is being targeted and or harassed by others who call to report him driving his golf cart. The officer assures Complainant that did not happen here and that he stopped Complainant because he drove by and saw the golf cart. The officer states that he doesn't believe he is wrong to do so. Complainant replies that, *"Stupid people don't know they're stupid!"* The officer attempts to discuss whether the golf cart can be driven on the sidewalk safely and Complainant retrieves papers apparently about OPDMDs and the ADA laws and he hands them to the officer. While Complainant had testified during investigation that responding officers refused to even look at his papers, video evidence does not support his accusation.

Review of the evidence, and testimony from the first officer initiating contact, showed that the first officer called for backup because Complainant came at him so aggressively. This assertion was supported by the video evidence. Within a few minutes of the contact, the officer requested a tone-down of that back-up response after Complainant re-entered his vehicle, with no apparent difficulty, and continued communication from a safe distance. Both the first officer at the scene and the second officer that arrived soon after first contact, took Complainant's offered ADA documents, looked through them and commented or asked questions about them. When the first officer asked if Complainant had Alaska statutes to refer to, Complainant responded, *"Fuck you, I don't have to! That's your job."* Complainant refers the officer to a printed picture of what is apparently a golf cart from the ADA printout. Complainant informs the officer of his intent to file a Department of Justice complaint against him. After the second officer arrives, he takes over at the Complainant's location while the first officer goes to another location in the parking lot to speak with an officer parked a short distance away. The

second officer engages Complainant in conversation that appears to de-escalate Complainant and is on a more personal level as they wait the first officer's return. The second officer looks through the pages of documents that Complainant offers him to review. At nine minutes into the traffic stop, the first officer returns and advises Complainant that he couldn't reach the Chief, so he spoke to his Lieutenant. He explains that the golf cart cannot be operated on the roadways or the sidewalks. The officer tries to explain the reason for this but Complainant refuses to listen, says he isn't going to listen, and tells the officer to, "*Give me a ticket and I'm going home.*" The officer informs Complainant that he is not giving him a ticket because Complainant is currently on private property and not driving the golf cart. Complainant says he is going to drive his golf cart home and that the officer "*will have to arrest*" him. The officer replies, "*Let me get to this last part then so you will understand what's going to happen. If you are caught out on the public roadways operating this on the roads or on the sidewalk, you will be stopped and it will be impounded.*" Complainant refers to them (Respondent) as "*fucking bastards.*" Complainant continues cursing and asks how he will get home, and the officer offers Complainant a ride home. Complainant firmly declines the offer saying that he won't get in the car with him and refers to the officer as a "*fascist bastard.*" The second officer on scene also offers a ride and the Complainant more politely declines and says he will call his wife. These interchanges, captured on audio and video, directly refute Complainant's testimony that Respondent left him stranded. As the first officer is driving away, Complainant loudly curses at him. At no time was Complainant threatened with arrest as Complainant has alleged, nor was he ever detained or threatened with incarceration, as Complainant testified that he was. After the officer conducted what was clearly shown to be a typical traffic stop, Complainant was issued a verbal warning that his golf cart was not legally permitted on public roadways or walkways, and that it would be impounded if he was found driving on them. During investigation, Complainant contended that he was "*detain[ed] for 1.5 to 1.75 hours.*" Evidence showed that the length of the traffic stop was less than twelve minutes. While Complainant said multiple times during investigation that he was most afraid of arrest due to his neck injury and the potential for paralysis, investigation showed that it was the Complainant who asked to be arrested, or dared the officer to arrest him, and that the officer declined to do so. Evidence showed that throughout the duration of the traffic stop, the responding officers who made face-to-face contact with the Complainant demonstrated professionalism and composure, despite Complainant's own hostile and uncooperative conduct toward them. Further, Complainant testified that there were multiple officers that made contact with him while video evidence showed that there were just two.

During investigation Complainant testified that upon choosing it to be his preferred OPDMD, the golf cart fell squarely under ADA/DOJ jurisdiction and was therefore exempt from all other laws. To his mind, it became an OPDMD and could no longer be judged as a golf cart for any purpose. Complainant provided copious amounts of reference materials to support his contention. Investigation found that major flaws in

Complainant's evidence and arguments existed. He produced evidence to show that "facilities" would apply to roadways and walkways, and he insisted that the burden is on the Respondent to first prove Complainant is unsafe to drive his preferred OPDMD on the roadways and walkways before denying him such access, per federal law which reads:

Businesses and government facilities must consider the following factors when deciding whether another powered option can be used:

Type, size, weight, dimensions and speed of the device

Pedestrian traffic in the facility

Design and operational characteristics of the facility, which can include:

Indoor or outdoor facility

Square footage

Furniture placement and density

Storage availability

Legitimate safety requirements for operation

Risk of serious harm to environmental, natural, or cultural resources

Conflicts with federal land management requirements

Businesses and governments can impose legitimate safety requirements for operating the OPDMD within a facility.

For example, a cruise ship may decide that people with disabilities using Segways® can generally be accommodated, except in constricted areas, such as passageways to cabins that are very narrow and have low ceilings.

Safety requirements must be based on actual risks, not on speculation or stereotypes about a particular type of device or how it might be operated by people with disabilities using them.

In deciding whether a type of OPDMD can be accommodated, covered entities must consider all assessment factors and, where appropriate, should develop and publicize rules for people with disabilities using these devices.

Such rules may include –

requiring the user to operate the device at the speed of pedestrian traffic; identifying specific locations, terms, or circumstances (if any) where the devices cannot be accommodated;

setting out instructions for going through security screening machines if the device contains technology that could be harmed by the machine; and

specifying whether or not storage is available for the device when it is not being used.
–ADA.gov (bold emphasis added)

Investigation showed Respondent met the requirements necessary to limit Complainant's use of his golf cart through its enactment of CBS Ordinance 11.75 because the ordinance measures actual safety risk while imposing commonly relied upon safety mandates, such as vehicle safety inspection and licensing of the operator. Complainant testified that Respondent did not advise him of the ordinance, which was public information and which the evidence in this case shows to be false. Investigation showed that the State of Alaska allowed local communities to opt out of a law allowing ATVs on streets where the speed limit was below 45mph. The City and Borough of Sitka elected to opt out and in March 2022, it enacted Ordinance No. 11.75, which provides assurances, to the extent possible, that both the drivers and the AP vehicles they operate are safe for the City and Borough's roadways. When made aware of the ordinance, Complainant defied it saying he would not register his vehicle and because it was his preferred OPDMD, he was not subject to CBS 11.75 or any other law governing his use of his OPDMD. When asked if he had a current driver's license, he responded that he has had one since he was nine years old; however, when asked to produce a copy for investigation purposes, he did not do so. Evidence obtained in the course of this investigation showed that he does not have a current driver's license and that his most recent registered vehicle registration expired in 2020.

Investigation determined that while Complainant has a right to his preferred OPDMD, Respondent is responsible for the safety of all its community members, including Complainant, and that responsibility is fundamentally essential to its purpose. It is reasonable that Respondent be able to put in place measures to assess safety. It seeks to ensure a person is safe to drive by requiring a driver's license, and insurance for those times when accidents may happen. Further, it seeks to ensure that the vehicles traversing its roadways and walkways are safe to do so. The mechanism it has put in place to achieve a reasonable determination that a person, disabled or not, is deemed safe to drive, and driving a safe vehicle, is for that person to undergo the licensing procedures and for the vehicle to be inspected and registered as safe. There was never, nor is there now, anything stopping Complainant from undergoing such reasonable examination. Respondent did testify that it is doubtful Complainant's golf cart would pass such inspection primarily because it is lacking the power required to safely traverse its roadways. Investigation produced evidence that independently showed no record exists that Complainant holds a valid driver's license. Complainant is seventy-nine years old and under Alaska's laws, he is thereby subject to in-person examination in order to obtain or renew his driver's license. Given the evidence produced by Complainant in support of his disabled physical condition, it would seem especially prudent for Complainant to undergo the licensing procedure to establish that he is safe to operate any motorized vehicle on public roadways.

Importantly, investigation showed that the ADA, on which Complainant relied upon and argued to the responding officer at first contact May 27, 2022, proved that Respondent's laws do not apply to him, in fact show the opposite:

The ADA does not entitle them to waivers, exceptions, or preferential treatment. However, a public entity may not impose eligibility criteria that screen out or tend to screen out individuals with disabilities unless the criteria are necessary for the provision of the service, program, or activity being offered.

—ADA.gov (bold emphasis added)

Investigation did not find evidence to show that Respondent was imposing criteria unnecessary to the safety of others on roadways, including Complainant. While it is true that Complainant's golf cart, as is, may not pass the required inspection to be allowed onto the city's roadways, Respondent applies the ordinance to everyone regardless of disability and is not singling out the Complainant. Respondent testified that there are, in fact, other modes of transportation that Complainant may just as easily access as his golf cart, but that would pass the inspection process, such as another type of ATV or side-by-side vehicle. Even if Complainant were to secure such an alternative OPDMD for himself, he still must have a valid, current driver's license, and evidence shows that he does not.

Finally, Complainant is simply wrong that his stated preferred OPDMD and disabilities waive him from being subject to the laws and ordinances put in place for the explicit purpose of safety, nor is he entitled to preferential treatment. Expecting Respondent to permit any unlicensed person, especially one with significant physical impairments and who has not passed a road test, to drive an un-inspected, un-registered vehicle that cannot power over 24 miles per hour, onto its city streets, would fundamentally alter the primary purpose of Respondent, which is to protect and keep safe the public it serves.

Therefore, having reviewed all evidence of any kind submitted by Complainant and Respondent, in addition to evidence obtained independently, I find that complainant's allegations are not supported by substantial evidence.

3/8/2023

Date

DocuSigned by:

Antoinette P. Rust

8D2319B24750462

Antoinette R. Rust
Investigator III

On behalf of the Executive Director, I approve this determination. The Commission staff will take no further action, and the case is now dismissed.

3/8/2023

Date

DocuSigned by:
Nanette C Gay

044E51DFC1644AB...
Nanette C. Gay
Investigations Director

Encl: Closing Order



THE STATE
of ALASKA
GOVERNOR MICHAEL J. DUNLEAVY

Office of the Governor
COMMISSION FOR HUMAN RIGHTS

800 A Street, Suite 204
Anchorage, Alaska 99501-3669
Main: 907.274.4692 / 907.276.7474
TTY/TDD: 907.276.3177
Fax: 907.278-8588

Ronald Dick
PO Box 6487
Sitka, AK 99835

Brian E. Hanson
Municipal Attorney, City and Borough of Sitka
100 Lincoln St.
Sitka, AK 99835

Re: *Ronald Dick v. City and Borough of Sitka, Sitka Police Department*
ASCHR No. J-23-001

CLOSING ORDER

Because investigation failed to discover substantial evidence of an unlawful discriminatory practice, this case is hereby dismissed without prejudice pursuant to AS 18.80.112(a).

3/8/2023

Date

Robert W. Corbisier
Executive Director

DocuSigned by:
Nanette C Gay
By: _____
044E51DFC1644AB...
Nanette C. Gay
Investigations Director

Notice of Right to Judicial Review

This is a final decision. Alaska Statutes 44.62.560 - 44.62.570 provide for judicial review of this order by the superior court. A notice of appeal must be filed with the superior court within 30 days of the date this order is mailed. All reasonable costs incurred in connection with preparing the transcript and the court's copy of the agency filed shall be borne by the appellant according to the Alaska Court Rules. The agency requires advance payment of the costs as reasonably estimated by the agency.