



CITY OF  
**PORTLAND, OREGON**  
OFFICE OF THE CITY AUDITOR  
Hearings Office

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**HEARINGS OFFICER'S ORDER**

CITY OF PORTLAND, petitioner, vs. MARK MADDEN, respondent

CASE NO. 2090055

PROPERTY: 2239 SE 11<sup>TH</sup> Avenue

LEGAL DESCRIPTION:  
Stephens Add, Block 113, Lot 3-6,  
City of Portland, Multnomah County, Oregon

DATE OF HEARING: October 19, 2009

APPEARANCES:

Ms. Kim Kosmas, for the City

Mr. Rich Grimes, representing the Respondent

HEARINGS OFFICER: Mr. Gregory J. Frank

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Ms. Kim Kosmas ("Kosmas"), Senior Fire Inspector for the City of Portland Fire Bureau, appeared and represented the City. Mr. Joseph Botkin ("Botkin"), Inspector for the Bureau of Development Services, testified on behalf of the City. Mr. Rich Grimes ("Grimes"), Construction Manager for Respondent, appeared and represented the Respondent. The Hearings Officer makes this decision based upon the testimony of Kosmas, Botkin and Grimes and the exhibits admitted (without objection) into the evidentiary record (Exhibits 1 through and including 14). The property subject to the hearing and this Order is commonly referred to as 2239 SE 11<sup>th</sup> Avenue and shall hereafter be referred to as the "Subject Property." This case arises as a result of the City filing Exhibit 1, Complaint City Code Violation ("Complaint"), with the Hearings Office.

Grimes, prior to testimony of Botkin and Kosmas, stipulated to the accuracy and correctness of paragraphs 1 and 2 of the Complaint. The Hearings Officer, for clarification, asked Grimes if he was stipulating that the alleged violations set forth in paragraph 2 of the Complaint are correct and do in fact exist. Grimes responded that he was stipulating to the existence of the alleged violations set forth in paragraph 2 of the Complaint.

The remainder of the hearing was devoted to testimony related to paragraph 3 of the Complaint. Botkin testified that the four permits currently were open and have not yet been "finalized." Botkin stated, based upon his review

of the records/files for the Subject Property, no "TOC" or "temporary occupancy permit" had been issued by the City because of failure of Respondent to make one or more required payment(s).

Kosmas testified, based upon her records in this case, no "TOC" had been issued to Respondent. Kosmas stated that the City was requesting the Hearings Officer to order Respondent to correct the violations and, in addition, to assess a civil penalty in the amount of \$4,293.15. Kosmas explained that the request for \$4,293.15 was cost recovery for inspections and citations related to the Subject Property and this case. Grimes responded that Respondent has experienced cash flow problems related to another restaurant/bar property being required to install a sprinkler system. Grimes stated that he expected all work associated with the violations in this case will be completed and final inspections approved by November 5, 2009.

Kosmas, after receiving a suggestion from the Hearings Officer, requested that the Hearings Officer amend paragraph 3 of the Complaint to reduce the civil penalty to \$3,000 and if all work is not completed and all permits finalized by November 12, 2009, then an additional civil penalty in the amount of \$5,000 be assessed. Grimes stated that he approved the requested amendment to the Complaint. The Hearings Officer, therefore, finds it appropriate to amend paragraph 3 of the Complaint to provide for a civil penalty of \$3,000 to cover costs of the Fire Bureau and an additional civil penalty of \$5,000; the \$5,000 civil penalty to be suspended until 4:30 p.m. on November 12, 2009. The Hearings Officer finds that if all violations are corrected, including all City of Portland permits being receiving final inspection and approval, by 4:30 p.m. on November 12, 2009 then the \$5,000 additional civil penalty shall be waived. The Hearings Officer finds that if all work is not completed/permits finalized by 4:30 p.m. on November 12, 2009 then the \$5,000 additional civil penalty shall become immediately due and payable and made a lien against the Subject Property on November 13, 2009.

The Hearings Officer finds it appropriate to retain jurisdiction in this case until November 20, 2009. Unless a party requests the Hearings Officer retain jurisdiction beyond November 20, 2009, this case shall be closed by the hearings office on November 23, 2009.

#### ORDER AND DETERMINATION:

1. Respondent shall correct the violations set forth in paragraph 2 of the Complaint.
2. A civil penalty in the amount of \$3,000 is assessed. This \$3,000 civil penalty is due on November 3, 2009, and if not paid, will become a lien on the subject property on November 4, 2009.
3. An additional civil penalty in the amount of \$5,000 is assessed. This \$5,000 additional civil penalty shall be suspended until November 12, 2009. In the event Respondent has completed all work at the Subject Property to correct the violations set forth in paragraph 2 of the Complaint, including all inspections approved and finalized by the Fire Bureau and/or Bureau of Development Services, by 4:30 p.m. on November 12, 2009, then this \$5,000 additional civil penalty shall be waived. Correction of work and permits being finalized shall be evidenced by receipt by the Hearings Office, by the 4:30 p.m. deadline, of a written document signed by a representative of the Portland Fire Bureau. If confirmation of correction of violations and permits finalized is not received by the Hearings Office by 4:30 p.m. on November 12, 2009, then the additional \$5,000 shall be due and payable and any unpaid amount shall become a lien against the Subject Property on November 13, 2009.
4. The Hearings Officer retains jurisdiction over this case until November 20, 2009.
5. This Order has been mailed to the parties on October 20, 2009, and shall become final and effective on November 3, 2009. Any objections to this order must be in writing and received by

the Code Hearings Office prior to the effective date. This case will be closed on November 23, 2009.

6. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: October 20, 2009

  
Gregory J. Frank, Hearings Officer

GJF:rs

Enclosure

<b>Exhibit #</b>	<b>Description</b>	<b>Submitted by</b>	<b>Disposition</b>
1	Complaint	Kosmas, Kim	Received
2	Mailing List	Kosmas, Kim	Received
3	Exhibit Description Page - Fire Inspection Reports Documenting Code Violations, History of Violations and Comments	Kosmas, Kim	Received
3a	Fire Inspection History Report	Kosmas, Kim	Received
3b	Fire Code Citation	Kosmas, Kim	Received
3c	Fire Inspection History Report	Kosmas, Kim	Received
3d	Fire Code Citation	Kosmas, Kim	Received
3e	Fire Inspection History Report	Kosmas, Kim	Received
3f	Notes	Kosmas, Kim	Received
4	Exhibit Description Page - Code References	Kosmas, Kim	Received
4a	2007 Oregon Fire Code	Kosmas, Kim	Received
4b	2004 Oregon Structural Specialty Code	Kosmas, Kim	Received
4c	2000 Uniform Fire Code	Kosmas, Kim	Received
5	Exhibit Description Page - Photographs	Kosmas, Kim	Received
5a	Photo	Kosmas, Kim	Received
5b	Photo	Kosmas, Kim	Received
5c	Photo	Kosmas, Kim	Received
6	Exhibit Description Page - Invoices	Kosmas, Kim	Received
6a	8/27/09 Payment Interface Exceptions	Kosmas, Kim	Received
6b	1/29/09 Invoice	Kosmas, Kim	Received
6c	4/9/09 Invoice	Kosmas, Kim	Received
6d	7/16/09 Invoice	Kosmas, Kim	Received
7	Exhibit Description Page - Cost Justification Worksheet for Civil Penalty	Kosmas, Kim	Received
7a	Relief Requested for Inspections Performed	Kosmas, Kim	Received
7b	Relief Requested for Inspections Performed by Individual Inspectors	Kosmas, Kim	Received
8	Exhibit Description Page - Tax Information and Permits	Kosmas, Kim	Received
8a	Multnomah Assessor Property Information	Kosmas, Kim	Received
8b	TRACS printout	Kosmas, Kim	Received
8c	TRACS printout	Kosmas, Kim	Received
8d	TRACS printout	Kosmas, Kim	Received
8e	TRACS printout	Kosmas, Kim	Received
9	Exhibit Description Page - Correspondence	Kosmas, Kim	Received
9a	1/22/09 letter, Peter Drake to Rich Grimes	Kosmas, Kim	Received
9b	1/22/09 letter, Nate Takara to Grimes	Kosmas, Kim	Received
9c	E-mails	Kosmas, Kim	Received

9d	2/7/09 E-mail	Kosmas, Kim	Received
9e	4/7/09 E-mail	Kosmas, Kim	Received
9f	E-mails	Kosmas, Kim	Received
9g	E-mails	Kosmas, Kim	Received
9h	E-mails	Kosmas, Kim	Received
9i	12/30/08 letter, Gerald Alvarez to Blitz Ladd/Madden with Inspection Report	Kosmas, Kim	Received
9j	1/30/09 letter, Alvarez to Blitz Ladd/Madden with Inspection Report	Kosmas, Kim	Received
9k	2/3/09 letter, Schimel to Blitz Ladd/Madden with Inspection Report	Kosmas, Kim	Received
9l	4/8/09 letter to Blitz Ladd/Madden	Kosmas, Kim	Received
9m	4/9/09 letter, Kosmas to Blitz Ladd/Madden with Inspection Report	Kosmas, Kim	Received
9n	Certified Mail Receipts	Kosmas, Kim	Received
9o	Letter, Kosmas to Blitz Ladd/Madden with Fire Code Citation	Kosmas, Kim	Received
9p	4/9/09 Invoice	Kosmas, Kim	Received
9q	4/28/09 letter to Blitz Ladd/Madden	Kosmas, Kim	Received
9r	6/16/09 letter to Blitz Ladd/Madden	Kosmas, Kim	Received
9s	7/17/09 letter, Kosmas to Blitz Ladd/Madden with Inspection Report	Kosmas, Kim	Received
9t	8/17/09 letter to Blitz Ladd/Madden	Kosmas, Kim	Received
9u	9/2/09 letter, Schimel to Blitz Ladd/Madden with Fire Code Citation	Kosmas, Kim	Received
9v	9/21/09 letter, Kosmas to Blitz Ladd/Madden with Fire Code Citation	Kosmas, Kim	Received
10	Exhibit Description Page - Stipulated Agreements	Kosmas, Kim	Received
10a	1/29/09 Stipulated Agreement	Kosmas, Kim	Received
10b	4/10/09 Notice - Disposition of Stipulated Agreement	Kosmas, Kim	Received
11	Mailing List	Hearings Office	Received
12	Hearing Notice	Hearings Office	Received
13	Notice of Rights and Procedures	Hearings Office	Received
14	Request to reschedule from Rich Grimes, Agent for Mark Madden	Madden, Mark	Received