



CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

CITY OF PORTLAND, Petitioner, vs. N & T, LLC, Respondent

CASE NO. 2110010

PROPERTY: Gossip Bar and Grille, 11340 NE Halsey Avenue
City of Portland, Multnomah County, Oregon

DATE OF HEARING: March 13, 2012

APPEARANCES:

Mr. Benjamin Walters, Attorney for the City

Mr. Michael Mills, Attorney for the Respondent

HEARINGS OFFICER: Mr. Gregory J. Frank

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

This hearing was originally scheduled for December 5, 2011. Following requests from both sides, the hearing was rescheduled several times. On March 12, 2012, the Hearings Office received telephone notification from the City Attorney's Office that the sides had an agreed-upon stipulated agreement to present on March 13, 2012. Deputy City Attorney Benjamin Walters appeared on behalf of the City. Attorney Michael Mills appeared on behalf of the Respondent.

A hearing was held on March 13, 2012, to review the agreement ("Stipulated Order") submitted as Exhibit 41a. Without objection from either party, the Hearings Officer admitted Exhibits: 1-6, 9-15, 21-32, 34, 39-41a. Exhibits 7-8, 16-20, 33, 35-38, and 42 were not offered and the Hearings Officer did not admit them into the evidentiary record.

The Hearings Officer reviewed the provisions of the Stipulated Order with the parties. The Hearings Officer requested clarification and confirmation of agreement on certain aspects of the document. The following items were addressed and agreed upon by both parties:

DEFINITION: Section 1(B)(2) refers to an "alcohol monitor." As this term is not defined elsewhere in the document, the parties jointly agreed that it refers to an employee of the Respondent whose exclusive duties/responsibilities are to monitor the alcohol consumption of patrons.

JURISDICTION: The duration of the Hearings Officer's retained jurisdiction for this case, as set out in Section 5, is one year.

DURATION: All terms of the agreement set out in the Stipulated Order, unless specifically excepted, are to remain in full force and effect for one year.

It is the decision of the Hearings Officer to adopt the Stipulated Order (Exhibit 41a -- attached) with the annotations listed above.

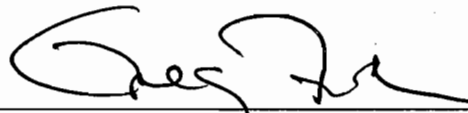
ORDER AND DETERMINATION:

1. The Stipulated Order (Exhibit 41a – attached) is adopted and incorporated by the Hearings Officer with the following annotations:
 - **DEFINITION:** Section 1(B)(2) refers to an "alcohol monitor." As this term is not defined elsewhere in the document, the parties jointly agreed that it refers to an employee of the Respondent whose exclusive duties/responsibilities are to monitor the alcohol consumption of patrons.
 - **JURISDICTION:** The duration of the Hearings Officer's retained jurisdiction for this case, as set out in Section 5, is one year.
 - **DURATION:** All terms of the agreement set out in the Stipulated Order, unless specifically excepted, are to remain in full force and effect for one year.
2. This Order has been mailed to the parties on March 14, 2012, and shall become final and effective on March 28, 2012. Any objections to this order must be in writing and received by the Code Hearings Office prior to the effective date.
3. This Order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: March 14, 2012

GJF:jeg

Attachment: Stipulated Order



Gregory J. Frank, Hearings Officer

Exhibit #	Description	Submitted by	Disposition
1	Complaint	Reese, Chief Michael	Received
2	Parties to Be Notified	Reese, Chief Michael	Received
3	OLCC Limited Liability Company Questionnaire	Reese, Chief Michael	Received
4	OLCC Individual History: Truong, Tuan Anh	Reese, Chief Michael	Received
5	OLCC Individual History: Nguyen, Yung Duc	Reese, Chief Michael	Received
6	10/11/11 Letter to Tuan Truong	Reese, Chief Michael	Received
7	PPB Special Report: 11-069116	Reese, Chief Michael	Not Offered
8	PPB Special Report: 11-069116	Reese, Chief Michael	Not Offered
9	PPB Investigation Report: 11-075619	Reese, Chief Michael	Received
10	PPB Custody Report: 11-075619	Reese, Chief Michael	Received
11	PPB Investigation Report: 11-75964	Reese, Chief Michael	Received
12	PPB Special Report: 11-078343	Reese, Chief Michael	Received
13	PPB Investigation Report: 11-080669	Reese, Chief Michael	Received
14	PPB Special Report: 11-080668	Reese, Chief Michael	Received
15	PPB Special Report: 11-080668	Reese, Chief Michael	Received
16	Notice of Hearing	Hearings Office	Not Offered
17	Mailing List	Hearings Office	Not Offered
18	11/23/11 letter	Mills, Michael	Not Offered
19	11/23/11 letter	Mills, Michael	Not Offered
20	11/30/11 Fax to Marchetti	Hearings Office	Not Offered
21	Mailing List	Hearings Office	Received
22	Notice of Hearing	Hearings Office	Received
23	Declaration of tuan Truong	Mills, Michael	Received
24	Motion for Summary Determination and Dismissal	Mills, Michael	Received
25	1/11/12 Request to postpone hearing	Marchetti, Theresa	Received
26	Complaint: City Code Violation, dated 11-3-11	Marchetti, Theresa	Received
27	Notice of Hearing	Hearings Office	Received
28	1/12/12 Request for Postponement	Mills, Michael	Received
29	Notice of Hearing	Hearings Office	Received
30	1/10/12 letter with attachments	Mills, Michael	Received
30a	E-mail - contents unreadable	Mills, Michael	Received
30b	Summary	Mills, Michael	Received
30c	Envelope addressed to Gossip Restaurant & Bar	Mills, Michael	Received
30d	Envelope addressed to Gossip Restaurant & Bar	Mills, Michael	Received
30e	6/29/10 letter, Reese to Gossip Restaurant and Bar	Mills, Michael	Received
30f	Memo	Mills, Michael	Received
30g	8/9/10 Memo, Gossip Bar to Marchetti	Mills, Michael	Received
30h	8/9/10 Memo, Yung Nguyen/Tony Truong to Marchetti	Mills, Michael	Received
30i	12/11/11 Memo, Nguyen/Truong to Marchetti	Mills, Michael	Received
30j	8/19/10 E-mail, Marchetti to Gossip Bar	Mills, Michael	Received
30k	8/16/10 document	Mills, Michael	Received
30l	E-mails	Mills, Michael	Received
30m	E-mails	Mills, Michael	Received
30n	Page 8/1	Mills, Michael	Received
30o	Page 8/2	Mills, Michael	Received
30p	Page 8/3	Mills, Michael	Received
30q	12/1/10 Memo, Gossip Restaurant & Lounge to OLCC – Liquor License Renewal	Mills, Michael	Received
30r	E-mails	Mills, Michael	Received
30s	E-mails	Mills, Michael	Received
30t	7/20/11 E-mail, Sarah Morgan to gossipbar	Mills, Michael	Received
30u	Proposed Restrictions	Mills, Michael	Received
30v	E-mails	Mills, Michael	Received
30w	Letter	Mills, Michael	Received
30x	E-mails	Mills, Michael	Received

30y	E-mails	Mills, Michael	Received
30z	8/5/11 E-mail, Morgan to gossipbar - Proposed Restrictions	Mills, Michael	Received
31	1/12/12 letter, Marchetti to Frank	Marchetti, Theresa	Received
32	1/12/12 letter, Marchetti to Frank	Marchetti, Theresa	Received
33	Petition for Order for Production and to Inspect and Copy	Mills, Michael	Not Offered
34	First Request for Production of Documents	Mills, Michael	Received
35	Certificate of Service	Mills, Michael	Not Offered
36	Certificate of Service	Mills, Michael	Not Offered
37	Declaration of Michael Mills	Mills, Michael	Not Offered
38	Certificate of Service	Mills, Michael	Not Offered
39	2/16/12 Letter from Hearings Officer to Michael Mills	Hearings Office	Received
40	Petitioner's Reply To Respondent's Motion For Summary Determination and Dismissal	Walters, Benjamin	Received
40a	Certificate of Service	Walters, Benjamin	Received
41	3/12/12 Fax Cover Sheet	Walters, Benjamin	Received
41a	Stipulated Order	Walters, Benjamin	Received
42	Business Cards	Mills and Walters	Not Offere

STIPULATED ORDER

CITY OF PORTLAND, Petitioner,

v.

N&T, LLC, Respondent

HEARING NO. 2110010

DATE OF HEARING: March 13, 2012

HEARINGS OFFICER: Gregory Frank

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APPEARANCES: Benjamin Walters, Chief Deputy City Attorney,
For City of Portland, Petitioner
Michael Mills
For N&T, LLC, Respondent

On the record before the Code Hearings Officer, the parties stipulated to certain terms and conditions to resolve the matters in dispute at the hearing. The stipulation was composed of the agreed upon terms and conditions:

1. Compliance Plan

- A. Respondent will follow a zero tolerance policy for any disorderly conduct by patrons of the business. Any patrons violating the zero tolerance policy will be permanently excluded from the business.
- B. 1. Respondent will have a minimum of two DPSST certified security personnel, and no less than one DPSST certified security personnel per 30 patrons, on-duty at the business after 9:00 p.m. on every Friday and Saturday, and on any day preceding a legal holiday and on legal holidays. For purposes of this Stipulated Order, "legal holidays" shall mean those holidays identified in ORS 187.010(1)(b) through ORS 187.1010(1)(j) (2012).
- 2. During events with DJs, Respondent will have a minimum of one on-duty alcohol monitor per 40 patrons at the business after 9:00 p.m.
- C. Respondent shall not allow the premises to exceed posted Fire Marshall occupancy limits at any time.
- D. Respondent will not offer live musical entertainment. Respondent will offer DJ entertainment on Friday and Saturday evenings only.
- E. Respondent will not host promoted events or competitive events with monetary

Stipulated Order

CITY OF PORTLAND
HEARINGS OFFICE
Exhibit #41a
Case # 2110010
Bureau Case # Unknown

awards.

- F. Respondent shall cause an incident log to be kept summarizing all events involving disturbances, trespasses, exclusions, service refusals, and other notable or illegal activities. Each staff making an entry will initial the log. Entries will include contacts with police for illegal activities.
 - G. Respondent shall restrict its business operating hours to between 7:00 a.m. until 2:00 a.m. daily.
 - H. Respondent shall cease all alcohol sales by 1a.m. daily. Respondent shall have at least one on-duty DPSST certified security personnel or on-duty manager monitoring the business's parking lot after 1:30 a.m. until all patrons have left the business premises.
 - I. Respondent shall restrict all patrons from possessing more than one drink at any time. Respondent shall not serve any patron more than one drink at one time. For purposes of this condition, a drink is defined as up to 16 ounces of beer, up to 7 ounces of wine or up to 2 ounces of alcohol.
 - J. Respondent shall use a one ounce measuring jigger for measuring pours of any alcohol.
 - K. Respondent shall not allow any visibly intoxicated patron to enter the premises. Any visibly intoxicated patrons on the premises will be asked to leave the premises.
 - L.
 - 1. Respondent shall cause staff on-duty or an on-duty manager to conduct walk throughs of the bar premises at least once every 30 minutes Sunday through Thursday from 8 pm until closing, for visual observation in all areas, to monitor patron alcohol consumption and behaviors.
 - 2. Respondent shall cause the staff on-duty or an on-duty manager to conduct walk throughs of the bar premises and parking lot at least once every 30 minutes on Friday and Saturdays from 8 pm until closing for visual observation in all areas, to monitor patrons' alcohol consumption and behaviors, and once every 30 minutes during business hours when number of patrons on premises appear to be close to Fire Marshall capacity.
2. The terms and conditions of this Stipulated Order have been determined by the parties to achieve desired outcomes. Therefore, time is of the essence in the performance of all of the terms and conditions of this Stipulated Order. If Respondent fails, refuses or neglects to meet any of the terms and conditions of this Stipulated Order, the City may immediately seek to enforce the provisions of this Agreement. The City shall not be required to give prior notice to Respondent, or provide Respondent with an opportunity to cure before the City seeks to enforce this Stipulated Order. The City's choice of

remedies in seeking to enforce the terms of this Stipulated Order shall be at its sole discretion.

3. Respondent hereby waives and releases any defenses and objections based upon events occurring on or before the effective date of this Stipulated Order. Respondent otherwise reserves the right to present defenses or objections which may arise after the effective date of this Stipulated Order, subject to the limitations set forth in this Stipulated Order.

4. **Non-Waiver**

A. The failure or neglect of the City to enforce prompt compliance by Respondent with any of the terms and conditions of this Stipulated Order shall not relieve Respondent of any such obligations of compliance. The City shall not be construed to have waived or limited any of its rights under this Stipulated Order by reason of such failure or neglect to enforce prompt compliance.

B. Any waiver by the City of any breach, violation or default of this Stipulated Order shall not operate nor be construed as a waiver by the City of any subsequent breach, violation or default of this Stipulated Order.

5. The Code Hearings Officer shall retain jurisdiction over this matter for the purposes of monitoring compliance and ordering additional relief and/or assessing additional civil penalties, if appropriate.

6. This Stipulated Order shall remain in effect for a period of one year from the entry date of this Order, as indicated below.

Dated: March _____, 2012

Code Hearings Officer