



CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF GRANT PETERSON

CASE NO. 3100413

[Police Bureau Case No. 10-86939]

PROPERTY: 621 SW 3rd

DATE OF HEARING: November 2, 2010

APPEARANCES:

Mr. William Wulk, for the City

Appellant did not appear

HEARINGS OFFICER: Mr. Gregory J. Frank

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Mr. Peterson submitted a request for a hearing before the City of Portland Code Hearings Officer (Exhibit 1). Mr. Peterson provided an address, in Exhibit 1, for mailings. The Hearings Office mailed to Mr. Peterson, to the address provided, a Notice of Hearing (Exhibit 6). The Notice of Hearing (Exhibit 6) was not returned by the U. S. Postal Service as undeliverable. Mr. Peterson did not contact, by any means, the Hearings Office after the mailing of the Notice of Hearing and prior to the hearing. Mr. Peterson did not appear at the scheduled hearing. PPI Security Guard Wulk appeared at the hearing and testified on behalf of the City. The Hearings Officer makes this decision based upon the testimony of PPI Security Guard Wulk and the documents admitted into the evidentiary record (Exhibits 1 through and including 7).

PPI Security Guard Wulk testified that on October 14, 2010, he was conducting routine patrol of the City of Portland operated parking garage at 621 SW 3rd Avenue when he made contact with Mr. Peterson on the 9th floor. PPI Security Guard Wulk stated that he was in uniform and wearing a badge when he contacted Mr. Peterson.

PPI Security Guard Wulk testified that Mr. Peterson indicated that he was “hanging out” in the parking garage and that he (Mr. Peterson) had no vehicle parked in the parking garage. PPI Security Guard Wulk stated that Rules of Conduct are posted at the entrance of each elevator and the access stairways (Exhibit 7). PPI Security Guard Wulk stated that one of the Rules of Conduct is that “No person shall enter or remain for any purpose other than to park or retrieve a motor vehicle or do business with a City Parking Garage retail tenant” (Exhibit 7). PPI Security Guard Wulk stated that he issued Mr. Peterson, on October 14, 2010, a Notice of Exclusion From City of Portland Parking Garages for “unauthorized entry” and “in garage w/out a vehicle.”

Mr. Peterson, in his request for an appeal hearing (Exhibit 1), stated that “the structure I was in is owned by the public. My rights as a citizen supercede Rules – specifically rule #2. Rules are not law or statute. If this were a private building, matters would differ. However, the structure I was in is public” (Exhibit 1).

The Hearings Officer finds that Portland City Code (“PCC”) section 3.15.020 B.4 states that the business operations division of the City has the right to “develop and enforce Rules of Conduct for City Parking Garages and City Buildings, and require all person to obey the Rules of Conduct...Any person who fails to comply with the Rules of Conduct for City Parking Garages or City Buildings, or the reasonable direction of the Person in Charge, may be excluded as provided in this Section.” A Person in Charge, per PCC 33.14.020 4.(2) includes “any person providing security services.” PCC 3.15.020 B.4.b states that “Any person in Charge may exclude any person who violates any Rule of Conduct while in or upon any City Parking Garage, from all City Parking Garages for a period of 180 days.”

The Hearings Officer finds that Mr. Peterson, in Exhibit 1, argues that he may not be excluded from a public structure. The Hearings Officer disagrees. The Hearings Officer finds that a person may be excluded, so long as the exclusion is authorized by law. The Hearings Officer finds that the PCC is a law promulgated by the City of Portland City Council and has the full force and effect of law. The Hearings Officer finds that PCC 3.15.020 B.4 authorizes the development and enforcement of Rules of Conduct. The Hearings Officer finds the Rules of Conduct to have the full force and effect of law. The Hearings Officer finds Rules of Conduct 2 states that “No person shall enter or remain for any purpose other than to park or retrieve a motor vehicle or do business with a City Parking Garage retail tenant” (Exhibit 7).

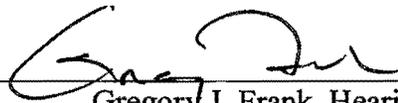
The Hearings Officer finds that a person may be excluded from a City Parking Garage if the person is present in the City Parking Garage for a purpose other than to travel to/from a vehicle parked in the garage or to patronize a Parking Garage retail tenant. The Hearings Office finds, based upon the evidence in the record, that Mr. Peterson was in the 621 SW 3rd City of Portland Parking Garage on October 14, 2010 for the purpose of “hanging out.” The Hearings Officer finds, based upon the evidence in the record, that Mr. Peterson did not have a vehicle parked in the 621 SW 3rd City of Portland Parking Garage and did not intend to patronize a retail tenant of the 621 SW 3rd City of Portland Parking Garage.

The Hearings Officer finds that Mr. Peterson was in the 621 SW 3rd City of Portland Parking Garage in violation of Rules of Conduct Rule 2. The Hearings Officer finds that the Notice of Exclusion issued to Mr. Grant Peterson on October 14, 2010 is valid.

ORDER AND DETERMINATION:

1. The Notice of Exclusion From City of Portland Parking Garages on October 14, 2010 (Exhibit 3) is valid; Mr. Peterson's appeal is denied.
2. The term of the exclusion shall be for 180 days starting on October 14, 2010.
3. This order has been mailed to the parties on November 3, 2010 and shall become effective immediately.
4. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: November 3, 2010



 Gregory J. Frank, Hearings Officer

GJF:rs

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Appeal form page 1a	Complaint Signer,	Received
2	Appeal form page 2	Complaint Signer,	Received
3	Notice of Exclusion From City of Portland Parking Garages	Complaint Signer,	Received
3a	Issuing Person's Sworn Statement/Affidavit	Complaint Signer,	Received
4	Special Report	Complaint Signer,	Received
5	Mailing List	Hearings Office	Received
6	Hearing Notice	Hearings Office	Received
7	Copies of Code, Rules and Policy Document Citations	Wulk, W.S.	Received