

# CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

## Hearings Office

1900 SW 4<sup>th</sup> Avenue, Room 3100

Portland, OR 97201

phone: (503) 823-7307 - fax: (503) 823-4347

web: [www.portlandoregon.gov/auditor/hearings](http://www.portlandoregon.gov/auditor/hearings)



## HEARINGS OFFICER'S ORDER

APPEAL OF JALDO G. ABINO, ALWAYS CAB COMPANY LLC

CASE NO. 3110415

DATE OF HEARING: October 19, 2011

### APPEARANCES:

Mr. Jaldo G. Abino, Appellant

Ms. Kathleen Butler, on behalf of the City

HEARINGS OFFICER: Mr. Gregory J. Frank

### FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Mr. Abino, Appellant, appeared at the hearing and testified on his own behalf. Ms. Kathleen Butler, Regulatory Division Manager of the City of Portland Revenue Bureau, appeared as the City representative. Mr. Frank Dufay and Ms. Lauren Wolfe appeared and testified on behalf of the City. Mr. Abino objected to the admission of Exhibit 1a, 3 and 6. Mr. Abino withdrew his objection to Exhibit 1a. The Hearings Officer sustained Mr. Abino's objection to Exhibit 3; Exhibit 3 was not admitted into the evidentiary record. The Hearings Officer overruled Mr. Abino's objection to Exhibit 6; Exhibit 6 was admitted into the evidentiary record. The Hearings Officer makes this decision based upon the testimony of Mr. Abino, Mr. Dufay and Ms. Wolfe, the arguments of Mr. Abino and Ms. Butler and the documents admitted into the evidentiary record (Exhibits 1, 1a, 2, 4, 5, 6, 7, 8, 9 and 10).

Exhibit 4 is an August 31, 2011 letter (hereafter the "Determination Letter") from Mr. Dufay to Jaldo Gemedra (aka Jaldo Abino) and the Always Cab Company LLC alleging two violations of the Portland City Code ("PCC") and assessing two civil penalties. Exhibit 1a is a letter from Mr. Abino to Mr. Dufay requesting an appeal hearing regarding the Determination Letter. The appeal hearing and this decision relate to the validity of the Determination Letter.

The Determination Letter sets forth allegations that Mr. Abino/Always Cab Company LLC violated PCC 16.40.150A by conducting taxi cab business within the City of Portland and violated PCC 16.40.190B by using an Always Cab Company LLC vehicle as a for-hire transportation vehicle without

a valid and unobstructed taxiplate issued by the City of Portland. The Determination Letter assessed two civil penalties for the alleged violations in the aggregate amount of \$1,500.

Mr. Dufay, an employee of the Regulatory Division, testified that prior to August 24, 2011 he had numerous contacts with Mr. Abino. Mr. Dufay stated that on one prior occasion he sent Mr. Abino/Always Cab Company LLC a letter of violation and assessed civil penalties. Mr. Dufay stated that Mr. Abino came to Mr. Dufay's office resulting in an agreement to treat the violation letter as a warning. Mr. Dufay testified that he explained to Mr. Abino that he (Mr. Abino/Always Cab Company LLC) could not operate his taxi in the City of Portland without first obtaining a City of Portland taxi permit. Mr. Dufay stated that his office continued to receive complaints that Mr. Abino was operating Always Cab Company LLC within the City of Portland. Mr. Dufay stated that Mr. Abino had submitted an application for a City of Portland taxi permit. Mr. Dufay stated he informed Mr. Abino that the Taxi Board (entity authorized to grant permits) was not issuing any new taxi permits and further that Mr. Abino/Always Cab Company LLC's application did not meet minimum standards. Mr. Dufay stated that he eventually decided to conduct a "sting" operation related to Mr. Abino/Always Cab Company LLC. Mr. Dufay stated that a telephone call was made to Always Cab Company LLC and requested a pick-up at Portland State University. Mr. Dufay stated that Mr. Abino, driving an Always Cab Company LLC vehicle (see Exhibit 10) arrived and shortly thereafter departed.

Mr. Dufay testified that he viewed various Always Cab Company LLC advertisements (see Exhibits 7, 8 and 9). Mr. Dufay stated that these advertisements offer taxi service within the City of Portland.

Ms. Wolfe, an employee of the Regulatory Division, testified that at approximately 10:15 a.m. on August 24, 2011 she telephone Always Cab Company LLC and made a reservation to be picked up at Portland State University in downtown Portland. Ms. Wolfe stated that she and Mr. Dufay walked from their office to Portland State University and at approximately 10:30 a.m. an Always Cab Company LLC vehicle approached her location and stopped. Ms. Wolfe stated that when she and Mr. Dufay started walking towards the Always Cab Company LLC vehicle, it pulled away.

Mr. Abino testified that he has a City of Portland business license and has licenses in Beaverton, Oregon City and other jurisdictions. Mr. Abino stated that he applied for a City of Portland taxi permit but he has not heard from the City whether it is being processed, approved or denied. Mr. Abino stated that until he obtains a City of Portland taxi permit he will continue to "cooperate" with other taxi companies. Mr. Abino stated that the Determination is a result of a "scheme" which he believes is unfair and unlawful.

During cross examination by Ms. Butler, Mr. Abino admitted that he was aware that he cannot legally operate a taxi in the City of Portland. Mr. Abino, at the hearing, admitted that he does receive calls from persons wanting taxi service in Portland. Mr. Abino stated that not having a City of Portland taxi permit is crippling his business outside the City of Portland. Mr. Abino stated that PCC 16.40 is a bad law and is not fair to taxi drivers such as himself.

The Hearings Officer finds the testimony of Mr. Dufay and Ms. Wolfe to be credible. The Hearings Officer finds that Mr. Abino's testimony regarding his operating a taxi in the City of Portland was evasive. Therefore, the Hearings Officer finds Mr. Abino's testimony to be less credible than that of Mr. Dufay and Ms. Wolfe.

The Hearings Officer finds that on August 24, 2011 Mr. Abino/Always Cab Company LLC responded to a telephone request by Ms. Wolfe to pick her up at Portland State University in downtown Portland. The Hearings Officer finds Mr. Abino/Always Cab Company LLC's action on August 24, 2011 to be conducting business as defined by PCC 16.40.030.J. The Hearings Officer finds Mr. Abino/Always Cab Company LLC did not have a City of Portland issued taxi permit. The Hearings Officer finds Mr. Abino/Always Cab Company LLC, on August 24, 2011, did violate PCC 16.40.150.A. The Hearings Officer also finds the Always Cab Company LLC vehicle arriving at Portland State University to pick up Ms. Wolfe did not have a lawfully affixed taxiplate; a violation of PCC 16.40.190.B.

The Hearings Officer finds that the advertisements (Exhibits 7, 8 and 9) are authorized by Mr. Abino/Always Cab Company LLC. The Hearings Officer finds that the advertisements (Exhibits 7, 8, and 9) do advertise Always Cab Company LLC services in the City of Portland in violation of PCC 16.40.030.J.

The Hearings Officer finds that the civil penalty assessed for violation of 16.40.150.A is for Mr. Abino/Always Cab Company LLC's first offense. The Hearings Officer finds that PCC 16.40.540.A provides that the first offense of PC 16.40.150.A is subject to a \$1,000 civil penalty. The Hearings Officer finds that PCC 16.40.540.A provides that the first offense of PCC 16.40.540.A is subject to a \$500 civil penalty. The Hearings Officer finds the amounts of the civil penalties assessed in the Determination Letter are correct.

Mr. Abino expressed his feelings that PCC 16.40 is bad law; it is unfair to small taxi companies. The Hearings Officer informed Mr. Abino that the appropriate body to consider his concern about PCC 16.40 is the Portland City Council.


The Hearings Officer finds the Determination Letter to be valid and that Mr. Abino/Always Cab Company LLC's appeal should be denied.

#### ORDER AND DETERMINATION:

1. The Determination Letter (Exhibit 4 - attached) is valid; Mr. Abino/Always Cab Company LLC's appeal is denied.
2. This order has been mailed to the parties on October 20, 2011.
3. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: October 20, 2011

GJF:rs/jeg

  
Gregory J. Frank, Hearings Officer

Enclosure

<b>Exhibit #</b>	<b>Description</b>	<b>Submitted by</b>	<b>Disposition</b>
<b>1</b>	<b>Appeal form page 1</b>	<b>Butler, Kathleen</b>	<b>Received</b>
<b>1a</b>	<b>Letter from Abino to Frank Dufay</b>	<b>Butler, Kathleen</b>	<b>Received</b>
<b>2</b>	<b>Appeal form page 2</b>	<b>Butler, Kathleen</b>	<b>Received</b>
<b>3</b>	<b>9/20/11 Staff Report by Dufay</b>	<b>Butler, Kathleen</b>	<b>Rejected</b>
<b>4</b>	<b>8/31/11 Violation letter, Dufay to Jaldo Gameda, Always Cab Co. LLC</b>	<b>Butler, Kathleen</b>	<b>Received</b>
<b>5</b>	<b>Mailing List</b>	<b>Hearings Office</b>	<b>Received</b>
<b>6</b>	<b>Hearing Notice</b>	<b>Hearings Office</b>	<b>Received</b>
<b>7</b>	<b>Advertisement</b>	<b>Butler, Kathleen</b>	<b>Received</b>
<b>8</b>	<b>Advertisement</b>	<b>Butler, Kathleen</b>	<b>Received</b>
<b>9</b>	<b>Advertisement</b>	<b>Butler, Kathleen</b>	<b>Received</b>
<b>10</b>	<b>Photo</b>	<b>Butler, Kathleen</b>	<b>Received</b>



**CITY OF PORTLAND**  
OFFICE OF MANAGEMENT AND FINANCE  
Sam Adams, Mayor  
Jack D. Graham, Chief Administrative Officer  
Thomas W. Lannom, Revenue Bureau Director

Kathleen Butler, Manager  
Regulatory Division  
Revenue Bureau  
111 SW Columbia, Room 600  
Portland, Oregon 97201-5840  
(503) 823-5157  
FAX (503) 823-5192  
TTY (503) 823-6868

August 31, 2011

Jaldo Gameda, Registered Agent  
Always Cab Company LLC  
PO Box 12425  
430 NE Sacramento St  
Portland, OR 97212

**RECEIVED**

SEP 22 2011

**HEARINGS OFFICE**

Re: **Violation of PCC 16.40.150; Taxi Company Permits Required**  
**Violation of PCC 16.40.190: LPT Decals and Taxiplates Required**

Dear Mr. Gameda,

At approximately 10:30 on August 24, 2011, Regulatory staff called Always Cab Company's advertised phone number and requested a ride from Portland State University to Nike Headquarters in Beaverton.

Your vehicle arrived, as requested, at 11:00 am, and parked across from the PSU Student Union, at 1825 SW Broadway, in Portland. As we approached your vehicle, you recognized me and pulled back into traffic and drove off.

I have also confirmed that, despite previous warnings, you continue to advertise for-hire transportation services on the web at: <http://www.alwayscab.com/>, which includes service in Portland. On your web page you advertise "for faster and cheaper taxi cab rides in and around Portland Metro Area...If you're in the following areas we recommend you to use us..." and you include Portland in that list.

We have also received a complaint that on July 28, 2011, at approximately 11:50 a.m., an Always Cab vehicle, Oregon DMV 414 CCP, and registered to you, was witnessed picking up customers at the Avalon Hotel & Spa, on SW Hamilton in Portland.

Per Portland City Code 16.40.030.J "Conduct Business" means operating a for-hire vehicle or company, receiving money or other compensation from the use of a for-hire vehicle, causing or allowing another person to do the same or advertising the same.

Per Portland City Code 16.40.150.A. Permit Required: *No person or entity may conduct business as a taxicab company without a valid, current company permit issued by the City under Chapter 16.40.*

Per Portland City Code 16.40.540.A. Civil Penalty Table, the penalty for a first offense violation of 16.40.150.A. is \$1,000.00

**Per Portland City Code 16.40.150A. you are hereby assessed a civil penalty in the amount of \$1,000.00 for failure to have a taxicab company permit.**

CITY OF PORTLAND  
HEARINGS OFFICE  
Exhibit #4  
Case # 3110415  
Bureau Case # Unknown

*An Equal Opportunity Employer*

*To help ensure equal access to programs, services and activities, the Office of Management & Finance will reasonably modify policies/procedures and provide auxiliary aids/services to persons with disabilities upon request.*

Per Portland City Code 16.40.190.B. Taxiplate Required for Taxicabs: *No taxicab vehicle may be used as a for-hire transportation vehicle without a valid and unobstructed taxiplate issued by the City under Chapter 16.40.*

Per Portland City Code 16.40.540.A. Civil Penalty Table, the penalty for a first offense violation of 16.40.190.B. is \$500.00.

**Per Portland City Code 16.40.190.B. you are hereby assessed a civil penalty in the amount of \$500.00 for failure to have a valid taxicab plate issued by the City on your vehicle.**

**The penalty amount for these two offenses is \$1,500 due September 12, 2011.**

You may appeal this decision to the Code Hearings Officer, under the provisions of City Code Chapter 22.10. Requests for appeal must be submitted in writing to Frank Dufay, PFHT Administrator, Regulatory Division, Revenue Bureau, 111 SW Columbia St, Suite 600, Portland, OR 97201. The written appeal must be received by me within 10 days of the date of this determination and must include a description of what you believe makes this determination invalid, unauthorized, or improper.

The appeal document must not be submitted directly to the Code Hearings Office, but must be processed through our office. Please be sure to send your appeal to the address indicated above to avoid delays in processing. You will receive an acknowledgment of any appeal you submit.

**Please be advised that continuing to operate in Portland without permits will result in further penalties.**

The penalties for subsequent offenses are as follows: A second offense penalty for violation of 16.40.150.A is \$1,500.00 and a third offense penalty is \$3,000.00. A second offense violation of 16.40.190 is \$1,000.00 and a third offense penalty is \$2,500.00.

Sincerely,

Frank Dufay  
Regulatory Program Administrator

cc: Kathleen Butler, Regulatory Division Manager