



CITY OF PORTLAND

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HEARINGS OFFICER'S ORDER

APPEAL OF YULIA TOMENKO

CASE NO. 3110479

[Police Bureau Case No. 11-91043]

PROPERTY: City of Portland Parking Garages – 621 SW 3rd

DATE OF HEARING: November 10, 2011

APPEARANCES:

Yulia Tomenko, Appellant

HEARINGS OFFICER: Ms. Kimberly M. Graves

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Ms. Yulia Tomenko submitted an Appeal form, Exhibit 1, regarding the Notice of Exclusion From City of Portland Parking Garages (Exhibit 7), which she received on October 16, 2011. Ms. Tomenko appeared at the scheduled hearing. At the Hearing, Ms. Maksimenko appeared and indicated that Ms. Tomenko needed the assistance of an interpreter for the hearing. Ms. Maksimenko indicated that she was able to interpret for Ms. Tomenko. Ms. Maksimenko took an oath and swore to accurately and truthfully interpret the proceedings for Ms. Tomenko to the best of her ability. Ms. Tomenko was informed that her hearing could be set over if she wished to have someone else assist her as an interpreter. Ms. Tomenko indicated that and she was satisfied with Ms. Maksimenko's assistance as an interpreter for the proceeding. The Hearing proceeded with Ms. Maksimenko acting as an interpreter for Ms. Tomenko. No one appeared on behalf of the City.

Ms. Tomenko, in her Appeal form, writes,

"There were no signs that stated that we couldn't walk on the stairs. They were by the elevators inside, but we came in outside. We weren't even in the garage, we were on the stairs."

At the Hearing, Ms. Tomenko indicated that she wished to rely on her written statement, and not provide further testimony.

The City submitted Exhibits 7 and 13 regarding the Notice of Exclusion issued to Ms. Tomenko on October 16, 2011. Exhibit 7 is a copy of the Notice of Exclusion From City of Portland Parking Garages which lists the conduct leading to issuance of the Exclusion as "Unauthorized Entry." The summary portion of the report reads "In garage w/out vehicle." The Exclusion indicates that Ms. Tomenko was in a City of Portland Parking Garage located at 621 SW 3rd when the Exclusion was issued. Exhibit 13 is an Incident Report from Portland Patrol Inc. (PPI) regarding the Exclusion issued to Ms. Tomenko. The report indicates that on October 16, 2011, at 12:50 a.m. two PPI security officers were patrolling the "Smart Park" garage located at 621 SW 3rd when they observed six subjects near the stairwell on level 8. The PPI officers asked the subjects whether they had a vehicle in the garage, and the subjects replied "no." The PPI officers informed the subjects that it was unlawful to be in the garage without a vehicle. The subjects provided the PPI officers with identifications. One subject was identified as Yulia Tomenko.

The Hearings Officer finds that the evidence in the record consists of the Exhibits entered into the record. The Hearings Officer admitted Exhibits 1 through, and including, 15 into the evidentiary record on her own motion, and without objection.

Portland City Code ("PCC") section 16.20.900 states that "City Parking Garages include any publically or privately owned real property, and the buildings, structures and facilities thereon, placed under the jurisdiction of the City for parking garage purposes, . . ." PCC 16.20.900 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." PCC section 16.20.900 C provides a list of the Rules of Conduct applicable to City-owned parking garages. PCC section 16.20.900 C 2 states, "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."

The Hearings Officer finds that there is no material conflict between the factual information provided by Ms. Tomenko in Exhibit 8, and the information provided by the City in Exhibit 13. The Hearings Officer finds that on October 16, 2011, Ms. Tomenko was in the stairwell of a City of Portland Parking Garage at a time in which she did not have a vehicle parked within the garage.

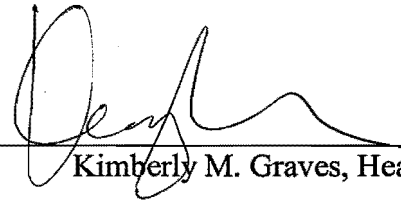
The Hearings Office finds that the stairwell of a parking garage is considered to be under the jurisdiction of the City for enforcement purposes because the stairwell is a portion of the parking garage structure. The Hearings Officer finds that it is more probable than not that Ms. Tomenko's conduct on October 16, 2011, in a City of Portland parking garage was in violation of #2 of the Rules of Conduct. The Hearings Officer finds that the Notice of Exclusion issued to Ms. Tomenko October 16, 2011, is valid.

ORDER AND DETERMINATION:

1. The Notice of Exclusion From City of Portland Parking Garages issued on October 16, 2011, (Exhibit 3) is valid; Ms. Tomenko's appeal is denied.
2. The term of the exclusion began on October 16, 2011, and shall conclude at 4:30 p.m. on April 13, 2012.
3. This order has been mailed to the parties on November 15, 2011, 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 15, 2011



Kimberly M. Graves, Hearings Officer

KMG:rs/jeg

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Appeal form page 1a	Complaint Signer's Office,	Received
1a	Notice of Exclusion From City of Portland Parking Garages	Complaint Signer's Office,	Received
2	Appeal form page 2	Complaint Signer's Office,	Received
3	Appeal form page 1a - Irina Maksimenko	Complaint Signer's Office,	Received
4	Notice of Exclusion From City of Portland Parking Garages - Irina Maksimenko	Complaint Signer's Office,	Received
5	Appeal form page 1a - Vladimir Romaschenko	Complaint Signer's Office,	Received
6	Notice of Exclusion From City of Portland Parking Garages - Valiry Ndrunik	Complaint Signer's Office,	Received
7	Notice of Exclusion From City of Portland Parking Garages	Complaint Signer's Office,	Received
8	Notice of Exclusion From City of Portland Parking Garages - Irina Maksimenko	Complaint Signer's Office,	Received
9	Notice of Exclusion From City of Portland Parking Garages - Valeriy Andronik	Complaint Signer's Office,	Received
10	Notice of Exclusion From City of Portland Parking Garages - Vladimir Romaschemko	Complaint Signer's Office,	Received
11	Notice of Exclusion From City of Portland Parking Garages - Vasily Romshchemk	Complaint Signer's Office,	Received
12	Notice of Exclusion From City of Portland Parking Garages - Aleksey Romshchemk	Complaint Signer's Office,	Received
13	Portland Patrol Incident Report	Complaint Signer's Office,	Received
14	Mailing List	Hearings Office	Received
15	Hearing Notice	Hearings Office	Received