



CITY OF  
**PORTLAND, OREGON**

HEARINGS OFFICE

1900 S.W. 4<sup>th</sup> Avenue, Room 3100  
Portland, Oregon 97201  
Telephone: (503) 823-7307  
FAX: (503) 823-4347  
TDD (503) 823-6868  
[www.portlandonline.com/auditor/hearings](http://www.portlandonline.com/auditor/hearings)

**HEARINGS OFFICER'S ORDER**

CITY OF PORTLAND, petitioner, vs. COLETTE H. NUUHIWA, respondent

CASE NO. 2090019  
[Bureau Case No. 02-101194-HS]

PROPERTY: 4908 NE 9<sup>th</sup> Avenue

LEGAL DESCRIPTION:  
Albina Hts; TL 7100 Lot 7 Block 1, 1N1E23BD-07100,  
City of Portland, Multnomah County, Oregon

DATE OF HEARING: April 22, 2009

APPEARANCES:

Mr. Jeff Strang, for the City

Respondent did not appear

HEARINGS OFFICER: Mr. Gregory J. Frank

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Mr. Jeff Strang, Inspector for the Bureau of Development Services, appeared and testified at the hearing on April 22, 2009. Notice of the April 22, 2009 hearing was sent to Ms. Nuuhiwa, Respondent, on April 6, 2009 (Exhibit 32). Respondent did not contact Mr. Strang or the Hearings Office prior to the hearing. Respondent did not appear at the April 22, 2009 hearing. The Hearings Officer makes this decision based upon the testimony of Mr. Strang and the exhibits admitted into the evidentiary record (Exhibits 1 through and including 33).

Mr. Strang reviewed each of the alleged violations listed on Attachment A to Exhibit 1. Mr. Strang indicated that the alleged violations 1 through and including 6 (Attachment A, Exhibit 1) were part of the violations originally identified in 2002 (Exhibit 15) and have not been corrected. Mr. Strang stated that alleged violations 1 through and including 9 (Attachment A, Exhibit 1) are significant fire, life and safety violations presenting a risk to any occupants of 4908 NE 9<sup>th</sup> (the "Subject Property"). Mr. Strang referenced a number of pictures (Exhibits 3, 5, 6, 7, 8, 9, 10) in his discussion of the existence of the alleged violations.

Mr. Strang testified that the Subject Property has a history of nuisance cases (Exhibit 11). Mr. Strang stated that numerous letters were sent to the Respondent but the Respondent was unresponsive (Exhibits 16 through and including 31).

The Hearings Officer finds, based upon Mr. Strang's testimony and the exhibits admitted into the evidentiary record, that violations 1 through and including 11 (Attachment A, Exhibit 1) exist.

Mr. Strang asked the Hearings Officer to impose various remedies against the Subject Property and/or Respondent. Mr. Strang requested that the Hearings Officer order Respondent to correct violations 1 through and including 11 (Attachment A, Exhibit 1). The Hearings Officer finds this request to be appropriate.

Mr. Strang then asked that the Hearings Officer assess a civil penalty in the amount of \$8,484.44. Mr. Strang stated that the City has conducted 24 inspections at the Subject Property since this case has been opened at a cost of \$94.56 per inspection (total of \$2,269.44). Mr. Strang stated that the cost incurred by the Bureau of Development Services for the hearing in this case is \$1,215. Mr. Strang stated that he was requesting an additional \$5,000 as a penalty (see Portland Policy Documents ADM 9.19 section 17) to reflect the severity of the violations (see, for example, violations 1 through and including 9) and the long time period that the case has been open with very little responsive action by the Respondent (see letters from City to Respondent, Exhibits 16 through and including 24). The Hearings Officer finds it appropriate to assess a civil penalty in amounts sufficient to cover the City's costs (cost of inspections plus cost of hearing). The Hearings Officer also finds it appropriate (Portland Policy Documents ADM 9.19 section 17 factors a.1, a.2, a.4, a.5, a.7, a.8, and a.9) to assess the additional \$5,000. The Hearings Officer finds that Respondent has had ample opportunity to communicate with the City regarding the correction of the violations, not taken all feasible steps to correct the violations, the violations have been continuous for an extended time, some of the violations (for example, violations 6 and 9) are easily and inexpensively corrected, and Respondent has not been cooperative with the City in correcting the violations.

Mr. Strang testified that, in his opinion, financial incentives may prompt Respondent to correct the violations in a more timely manner. Mr. Strang stated that a number of the violations (see, for example, violations 1 through and including 4) require the issuance of City permits. Mr. Strang requested that the Hearings Officer assess an additional civil penalty in the amount of \$5,000 but this civil penalty be suspended for 30 days to allow Respondent to apply, pay for and have issued all necessary permits and if the all permits are issued within the 30 days, the \$5,000 additional civil penalty would be cancelled. The Hearings Officer finds Mr. Strang's permit incentive suggestion is reasonable and appropriate. The Hearings Officer finds that if the Respondent makes application, pays for and has issued all necessary permits to correct the violations, within 30 days, the \$5,000 additional civil penalty for permits will be cancelled; not be an obligation of Respondent or become a lien against the Subject Property.

Mr. Strang next requested that an additional incentive civil penalty be assessed to prompt Respondent (if permits are issued in a timely manner) to request "rough" or "cover inspection" for any electrical, plumbing or mechanical City permit issued. Mr. Strang requested that the Hearings Officer assess an additional civil penalty of \$5,000 but this civil penalty be suspended for 60 days to allow Respondent to obtain "rough" or "cover inspections for any electrical, plumbing or mechanical permits and if the inspections are obtained within 60 days the \$5,000 additional civil penalty for "rough" or "cover inspections" will be cancelled. The Hearings Officer finds Mr. Strang's "rough" or "cover inspection" incentive suggestion is reasonable and appropriate. The Hearings Officer finds that if the Respondent obtains "rough" or "cover inspections" within 60 days, the \$5,000 additional civil penalty for "rough" and "cover inspections" will be cancelled; not be an obligation of Respondent or become a lien against the Subject Property.

Mr. Strang next requested that a final incentive civil penalty be assessed to prompt Respondent, if permits are issued and "rough" or "cover inspections" obtained in a timely manner, to complete all corrective activity and have all permits "finaled." Mr. Strang requested that the Hearings Officer assess an additional civil penalty of \$10,000 but this civil penalty be suspended for 120 days to allow Respondent to correct all violations and if all violations are corrected (all permits "finaled" and written approval received by a BDS Housing Inspector) within 120 days, the \$10,000 additional civil penalty will be cancelled. The Hearings Officer finds Mr. Strang's request

for an incentive related to completing all work in 120 days, with a \$10,000 additional civil penalty to be waived if the correction is made, is reasonable and appropriate given the facts of this case.

Finally, Mr. Strang requested that the Hearings Officer's Order allow the City to abate for a period of 1 year, without the necessity of an administrative search warrant, any future confirmed nuisance or disabled vehicle at the Subject Property. Mr. Strang testified that the Subject Property has a history of confirmed nuisance cases (Exhibit 11). The Hearings Officer finds that the Subject Property has had at least 4 confirmed nuisance cases and one of those cases required City abatement. The Hearings Officer finds it appropriate to grant Mr. Strang's request for summary abatement to allow more efficient corrective action be taken in nuisance cases; a benefit to the surrounding community which is impacted by the nuisance activity at the Subject Property.

#### ORDER AND DETERMINATION:

1. Respondent shall correct all violations set forth on Attachment A, Exhibit 1.
2. A civil penalty in the amount of \$8,484.44 is awarded and if not paid by May 15, 2009 shall become a lien upon the Subject Property.
3. An additional civil penalty in the amount of \$5,000 is awarded. This additional civil penalty (paragraph 3 of this Order) shall be suspended until 4:30 p.m. on June 12, 2009. If a writing is received by the Hearings Office, from the Bureau of Development Services, prior to 4:30 p.m. on June 12, 2009 indicating all necessary permits to correct the violations set forth on Attachment A of Exhibit 1 have been applied and paid for and issued, then this additional \$5,000 civil penalty (paragraph 3 of this Order) shall be cancelled. If a writing is not received by the Hearings Office by 4:30 p.m. on June 12, 2009, then the additional \$5,000 civil penalty (paragraph 3 of this Order) shall become due and payable and become a lien against the Subject Property.
4. An additional civil penalty in the amount of \$5,000 is awarded. This additional civil penalty (paragraph 4 of this Order) shall be suspended until 4:30 p.m. on July 17, 2009. If a writing is received by the Hearings Office, from the Bureau of Development Services, prior to 4:30 p.m. on July 17, 2009, indicating that one "rough" or "cover" inspection for at least one of the required permits (issued timely per paragraph 3) has been approved (electrical or plumbing or mechanical), then this additional civil penalty (paragraph 4 of this Order) shall be cancelled. If a writing is not received by the Hearings Office by 4:30 p.m. on July 17, 2009, then the additional civil penalty (paragraph 4 of this Order) shall become due and payable and a lien against the Subject Property.
5. An additional civil penalty in the amount of \$10,000 is awarded. This additional civil penalty (paragraph 4 of this Order) shall be suspended until 4:30 p.m. on September 25, 2009. If a writing is received by the Hearings Office, from the Bureau of Development Services, prior to 4:30 p.m. on September 25, 2009 indicating that all violations have been corrected and approved by the Bureau of Development Services, then the \$10,000 additional civil penalty (issued timely per paragraph 5) shall be cancelled. If a writing is not received by the Hearings Office by 4:30 p.m. on September 25, 2009, then the additional civil penalty (paragraph 5 of this Order) shall become due and payable and a lien against the Subject Property.
6. If the Bureau of Development Services determines the Subject Property is occupied, then the Subject Property shall be vacated and secured against entry by all persons excepting for the Respondent and persons with written permission from the Respondent for the sole purpose of correcting violations 1, through and including 9 (Attachment A, Exhibit 1) – no person may occupy the Subject Property until violations 1 through and including 9 (Attachment A, Exhibit 1)


and the corrections approved by a representative of the Bureau of Development Services of the City of Portland. The City, through the Bureau of Development Services, shall have the right to impose additional liens against the Subject Property for costs associated in the relocation of any tenants of the Subject Property to the extent permitted by Portland City Code 22.05.010 and 22.06.010, and Oregon Revised Statute 90.450. The Bureau of Development Services will submit all costs of relocation to the Hearings Officer for review and certification.

7. The City shall have the right to summarily abate any future confirmed nuisance violations (including, but not limited to trash and debris, open and vacant building, disabled vehicle on private property) from the date of this Order until May 30, 2010. The City shall not be required to provide notice to Respondent and may proceed without a search warrant, and with the assistance of the Portland Police Bureau, if necessary.
8. The Hearings Officer shall retain jurisdiction until June 2, 2010.
9. This order has been mailed to the parties on May 1, 2009, and shall become final and effective on May 15, 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 June 4, 2010.
10. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: May 1, 2009

GJF:rs

Enclosure

  
\_\_\_\_\_  
Gregory J. Frank, Hearings Officer

<b>Exhibit #</b>	<b>Description</b>	<b>Submitted by</b>	<b>Disposition</b>
1	Complaint with list of violations	Strang, Jeffrey A.	Received
2	Notification List	Strang, Jeffrey A.	Received
3	Photo	Strang, Jeffrey A.	Received
4	Multnomah Assessor Property Information	Strang, Jeffrey A.	Received
5	1/14/02 photos	Strang, Jeffrey A.	Received
6	2/4/02 photos	Strang, Jeffrey A.	Received
7	2/9/06 photos	Strang, Jeffrey A.	Received
8	10/29/07 photos	Strang, Jeffrey A.	Received
9	5/8/08 photos	Strang, Jeffrey A.	Received
10	11/10/08 photos	Strang, Jeffrey A.	Received
11	TRACS printout	Strang, Jeffrey A.	Received
12	TRACS printout	Strang, Jeffrey A.	Received
13	Inspection cards	Strang, Jeffrey A.	Received
14	Case History	Strang, Jeffrey A.	Received
15	1/14/02 Notice of Violation - Property Maintenance Code letter, Curt French to Nuuhiwa	Strang, Jeffrey A.	Received
16	5/26/03 Progress Report letter, Charles Myrick to Nuuhiwa	Strang, Jeffrey A.	Received
17	11/17/03 Progress Report letter, Myrick to Nuuhiwa	Strang, Jeffrey A.	Received
18	8/16/04 Progress Report letter, Myrick to Nuuhiwa	Strang, Jeffrey A.	Received
19	4/15/05 Progress Report letter, Myrick to Nuuhiwa	Strang, Jeffrey A.	Received
20	12/21/05 Progress Report letter, Myrick to Nuuhiwa	Strang, Jeffrey A.	Received
21	4/30/07 Progress Report letter, Strang to Nuuhiwa	Strang, Jeffrey A.	Received
22	10/31/07 Additional Violations letter, Strang to Nuuhiwa	Strang, Jeffrey A.	Received
23	5/12/08 Referral of Housing Case to Code Hearings Officer letter, Strang to Nuuhiwa	Strang, Jeffrey A.	Received
24	11/12/08 Progress Report letter, Strang to Nuuhiwa	Strang, Jeffrey A.	Received
25	11/26/08 Referral of Housing Case to Code Hearings Officer letter, Strang to Nuuhiwa	Strang, Jeffrey A.	Received
26	City Lien Report	Strang, Jeffrey A.	Received
27	Notice of City of Portland Housing Code Violation and Possible Lien Against the Property	Strang, Jeffrey A.	Received
28	6/6/02 Notice of Code Enforcement Fee Increase letter, Nancy Blackledge to Nuuhiwa	Strang, Jeffrey A.	Received
29	9/26/07 Enforcement Fee Increase Notification letter	Strang, Jeffrey A.	Received
30	6/30/08 Enforcement Fee Increase Notification letter	Strang, Jeffrey A.	Received
31	Mailing List	Hearings Office	Received
32	Hearing Notice	Hearings Office	Received
33	Notice of Rights and Responsibilities	Hearings Office	Received