



CITY OF
PORTLAND, OREGON

HEARINGS OFFICE

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HEARINGS OFFICER'S INTERIM ORDER

CITY OF PORTLAND, petitioner, vs. CAREN MANEKER, respondent

CASE NO. 2090021
[Bureau Case No. 06-147896-HS]

PROPERTY / PARK: 6718 SE 47th Avenue

LEGAL DESCRIPTION:
Section 19 1 S 2 E; TL 9600 0.17 ACRES, 1S2E19BA-09600,
City of Portland, Multnomah County, Oregon

DATE OF HEARING: April 23, 2009

APPEARANCES:

Ms. Peggy Whelan, for the City

Respondent did not appear

HEARINGS OFFICER: Mr. Gregory J. Frank

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Ms. Peggy Whelan, Housing Inspector for the City of Portland, appeared and testified on behalf of the City. Respondent did not appear at the hearing. Mr. Bryce Buchanan appeared and testified at the request of the City. Mr. Buchanan is a tenant at 6718 SE 47th Avenue, Portland, Oregon (the "Subject Property"). After the hearing, but prior to the issuance of this Interim Order, Ms. Whelan submitted a memorandum summarizing an inspection of the Subject Property (Exhibit 26). The Hearings Officer admitted Exhibit 26 into the record. The Hearings Officer makes this interim decision based upon the testimony of Ms. Whelan and Mr. Buchanan and the exhibits admitted into the evidentiary record (Exhibits 1 through and including 26).

Ms. Whelan reviewed violations set forth in Exhibit 25. Ms. Whelan stated that this case has been open since 2006 and corrections made by Respondent have been few and sporadic. Mr. Buchanan stated that Respondent's son, on occasion, does small repairs. Mr. Buchanan stated that Respondent is generally unresponsive to tenant requests for repairs/maintenance.

The Hearings Officer finds, based upon the evidence in the record, that violations do exist as set forth on Exhibit 25. The Hearings Officer notes that Ms. Whelan's memo (Exhibit 26) suggests that violation 35 "appears to present no threat to the occupants...no vacation of the property will be necessary."

Ms. Whelan requested that the Hearings Officer assess a civil penalty to allow the City to recover costs associated with inspections of the Subject Property (8 inspections at \$94.56 each) and the cost of bringing the case to hearing (\$1,215). The Hearings Officer finds that the request for the imposition of a civil penalty for costs incurred by the City, in the amount of \$1,971.48 is reasonable and appropriate. Ms. Whelan also requested that the Hearings Officer assess an additional civil penalty in the amount of \$28,000. Ms. Whelan justified the \$28,000 civil penalty request on the basis that Respondent/owner of the Subject Property has charged rent (Ms. Whelan estimated \$1,000 per month) for the period of time the case has been open. In addition, Ms. Whelan stated, as additional justification for the \$28,000 civil penalty, that a number of the violations present serious safety risks to the tenants of the Subject Property. The Hearings Officer, at this time, finds that imposition of a civil penalty for cost recovery is appropriate. However, the Hearings Officer defers the request for \$28,000; the Hearings Officer finds that the underlying logic/reasons for the \$28,000 have merit. The Hearings Officer defers this assessment of the \$28,000 as an incentive to the Respondent to make contact with the City and make substantial performance in correcting the fire, life and safety (violations 1, 2, and 9 – Attachment A of Exhibit 1) and also health sanitation violations (violations 10, 11 and 19).

Ms. Whelan requested additional incentive-based civil penalties (Exhibit 1, paragraph 3). Ms. Whelan also requested, because of the existence of the fire, life and safety violations (1, 2, and 9 – Attachment A of Exhibit 1), the residence should be vacated and costs of relocation be assessed as additional civil penalties against the Subject Property. The Hearings Officer finds that vacation of the all persons residing at the Subject Property is a reasonable request. Further, the Hearings Officer finds that assessment against the Subject Property of costs, permitted by City Code and Oregon statutes, is also appropriate.

The Hearings Officer requested Ms. Whelan conduct another inspection of the Subject Property to determine the true safety risks to tenants. The Hearings Officer permits Ms. Whelan to add additional violations to Attachment A of Exhibit 1 if, upon re-inspection, significant fire, life and safety violations are discovered. The Hearings Officer finds that the imposition of additional civil penalties and vacation of the residence at the Subject Property will be considered at a continued hearing to be held on **9:00 a.m. on May 26, 2009 (Room 2500A, 1900 SW Fourth Avenue, Portland, Oregon).**

ORDER AND DETERMINATION:

1. Violations as set forth on Exhibit 25 exist and shall be corrected.
2. A civil penalty in the amount of \$1,971.48 is awarded and if not paid by May 26, 2009, shall become a lien upon the Subject Property.
3. A continued hearing will be held at 9:00 a.m. on May 26, 2009 in Room 2500A, 1900 SW Fourth Avenue, Portland, Oregon, for the purposes of considering the imposition of additional civil penalties and ordering vacation of the residential structure at the Subject Property.
4. This Interim Order has been mailed to the parties on May 8, 2009, and shall become final and effective on May 22, 2009. Any objections to this order must be in writing and received by the Code Hearings Office prior to the effective date.

5. This Interim Order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: May 8, 2009



Gregory J. Frank, Hearings Officer

GJF:rs

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Complaint with Attachment A - List of Violations	Whelan, Peggy	<u>Received</u>
2	Notification List	Whelan, Peggy	<u>Received</u>
3	Photo	Whelan, Peggy	<u>Received</u>
4	Multnomah Assessor Property Information	Whelan, Peggy	<u>Received</u>
5	8/9/06 Photos	Whelan, Peggy	<u>Received</u>
6	3/16/07 Photos	Whelan, Peggy	<u>Received</u>
7	1/7/09 Photos	Whelan, Peggy	<u>Received</u>
8	TRACS printout	Whelan, Peggy	<u>Received</u>
9	TRACS printout	Whelan, Peggy	<u>Received</u>
10	Case history	Whelan, Peggy	<u>Received</u>
11	TRACS printout	Whelan, Peggy	<u>Received</u>
12	9/1/06 Notice of Violation-Property Maintenance Code letter, Edgar Bolden to Maneker	Whelan, Peggy	<u>Received</u>
13	4/2/07 Additional Violations letter, Bolden to Maneker	Whelan, Peggy	<u>Received</u>
14	8/7/07 Additional Violations letter, Whelan to Maneker	Whelan, Peggy	<u>Received</u>
15	2/12/08 Progress Report letter, Bolden to Maneker	Whelan, Peggy	<u>Received</u>
16	8/21/08 Progress Report letter, Whelan to Maneker	Whelan, Peggy	<u>Received</u>
17	1/9/09 Notice of Additional Property Maintenance Code Violations & Referral of Housing Case to Code Hearings Officer letter, Whelan to Maneker	Whelan, Peggy	<u>Received</u>
18	City Lien Report	Whelan, Peggy	<u>Received</u>
19	10/2/06 Notice of City of Portland Housing Code Violation and Possible Lien Against the Property	Whelan, Peggy	<u>Received</u>
20	9/26/07 Enforcement Fee Increase Notification letter	Whelan, Peggy	<u>Received</u>
21	6/30/08 Enforcement Fee Increase Notification letter	Whelan, Peggy	<u>Received</u>
22	Mailing List	Hearings Office	<u>Received</u>
23	Hearing Notice	Hearings Office	<u>Received</u>
24	Notice of Rights and Responsibilities	Hearings Office	<u>Received</u>
25	Notice of Violation, Additional Violations dated 3/31/09	Whelan, Peggy	<u>Received</u>
25a	Reduced-size copies of Exh. 25 (2 sets)	Whelan, Peggy	<u>Received</u>
26	Memo	Whelan, Peggy	<u>Received</u>