

# 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 WILLIAM NIXON

CASE NO. 3100414

DATE OF HEARING: November 5, 2010

### APPEARANCES:

Mr. William Nixon, Appellant

Ms. Kathleen Butler, for the City

HEARINGS OFFICER: Mr. Gregory J. Frank

### FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Ms. Kathleen Butler ("Ms. Butler"), Regulatory Division Manager for the City of Portland Revenue Bureau, appeared and represented the City. Mr. Frank Dufay ("Mr. Dufay"), Regulatory Program Administrator for the City of Portland Revenue Bureau, appeared at the hearing and testified on behalf of the City. Mr. William Nixon ("Mr. Nixon") appeared at the hearing and represented and testified for the Appellant. Appellant owns and/or operates Blue Star Cab Company ("Blue Star"). The Hearings Officer makes this decision based upon the testimony of Mr. Dufay and Mr. Nixon and the documents admitted into the evidentiary record (Exhibits 1 through and including 12).

Appellant contests, in this appeal, the validity of a letter sent by the City to Appellant on October 4, 2010 (Exhibit 3 – hereafter the "Determination Letter"). The Determination Letter, in summary, states that Appellant violated Portland City Code ("PCC") 16.40.150.A and PCC 16.40.190.B because Appellant picked up passengers at a location (Duke's Country Bar & Grill – hereafter "Duke's") within the City of Portland limits without having been issued a City of Portland permit and not displaying a City of Portland issued taxi plate. Based upon Appellant's alleged violations of PCC 16.40.150.A and PCC 16.40.190.B, a penalty was assessed by the City against Appellant in the amount of \$750.00.

Mr. Dufay testified that on October 1, 2010, on behalf of the City, he traveled to Duke's based upon a complaint of unauthorized taxicab service being conducted at that location. Mr. Dufay stated that while in Duke's parking lot, he observed a Blue Star taxicab parked in front of Duke's main entrance with the

taxi's top light illuminated and rear passenger door open. Mr. Dufay stated that he observed a number of persons standing in close proximity to the Blue Star taxicab. Mr. Dufay stated he observed no person get into the Blue Star taxicab. Mr. Dufay stated that his observation of the Blue Star taxicab lasted approximately 3 or 4 minutes. Mr. Dufay testified that he had a telephone conversation with Mr. Nixon and that Mr. Nixon confirmed that he "hung out" at Duke's. Mr. Dufay stated that Mr. Nixon told him that he (Mr. Nixon) received a reduced price for a salad in return for taking passengers for Duke's. Mr. Dufay stated that Duke's management permitted him to park in front of the main entrance rather than taking a "customer parking space."

Mr. Nixon testified that he regularly, on weekend evenings, parks in front of the main entrance at Duke's. Mr. Nixon stated that Duke's is located such that he can respond quickly to service calls and during evening hours, before his busy time which starts at 1:30 a.m., he eats and socializes at Duke's. Mr. Nixon stated that he does not receive a reduced cost for taking taxicab passengers from Duke's. Rather, Mr. Nixon stated that he receives a discount because he has a "VIP" card which is issued to long-time Duke's customers. Mr. Nixon stated that if the top light of his taxicab was illuminated on October 1, 2010, it was an oversight or mistake on his part. Mr. Nixon stated that on occasion he has been asked by management at Duke's or Portland Police to transport one or more drunken customers from Duke's to another location. Mr. Nixon stated that this has occurred approximately five times and in only one instance did he accept any form of payment. Mr. Nixon stated he did not transport anyone from Duke's, as a taxicab passenger, on October 1, 2010.

Mr. Nixon submitted a "log" for Appellant's taxicab (Exhibit 10). The Hearings Officer finds that the "log" is supportive of Mr. Nixon's testimony that he did not pick up a customer at Duke's on or about the time Mr. Dufay observed Appellant's taxicab at Duke's on October 1, 2010.

The Hearings Officer finds that the Determination Letter references Mr. Dufay's "patrol" observation of October 1, 2010 as the basis of the City's alleged violation. The Hearings Officer finds that Mr. Nixon's admission that he did, at the request of a Portland Police Officer on one occasion, accept a fare for transporting a Duke's customer was not referenced in the Determination Letter and was not alleged to be a violation. The Hearings Officer finds that such activity would, had it been alleged in the Determination Letter, be a violation of PCC 16.40.150.A and PCC 16.40.190.B.

PCC 22.03.080.B and ADM 9.01 – 11(b) state that "the burden of presenting evidence to support a fact or proposition rests on the proponent of that fact or proposition." In this case, the City has the burden to show, by a preponderance of the evidence, that: (1) Appellant's taxicab conducted business, as alleged in the Determination Letter, without a valid, current company permit issued by the City under Chapter 16.40 and/or (2) Appellant's taxicab was used within the City of Portland limits, as alleged in the Determination Letter, without having a valid and unobstructed taxi plate issued by the City under Chapter 16.40.

The Hearings Officer finds the testimony related to Mr. Dufay's observations on October 1, 2010 at Duke's to be credible. The Hearings Officer finds that the simple act of parking a taxicab in front of a business establishment located in the City of Portland is not sufficient to constitute "conducting business" or "providing taxicab service." In this case, the Hearings Officer found Mr. Nixon's testimony that he frequents Duke's to eat and socialize and use Duke's as a central point to travel to pick up customers outside the City of Portland to be credible. The Hearings Officer also found Mr. Nixon's testimony that he forgot to turn off his top light to be credible. The Hearings Officer finds Appellant's

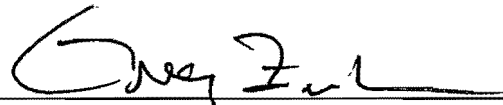
taxicab was parked in front of Duke's main entrance on October 1, 2010 with its top light illuminated. The Hearings Officer finds that there is no evidence in the record to indicate that Appellant's vehicle was used, on October 1, 2010, to conduct a pickup of one or more taxicab customer(s) at Duke's.

The Hearings Officer finds that that the City failed to provide substantial evidence that on October 1, 2010, Appellant's taxicab was used to "conduct business" or "provide taxicab service" within the City of Portland in violation of PCC 16.40.150.A or PCC 16.40.190.B. The Hearings Officer finds the Determination Letter conclusion that Appellant, on October 1, 2010, violated PCC 16.40.150.A and/or PCC 16.40.190.B not to be valid. Therefore, the Hearings Officer finds the assessment of penalties in the Determination Letter is not legally supportable. The Hearings Officer finds Appellant prevailed in this appeal.

#### ORDER AND DETERMINATION:

1. The Determination Letter (Exhibit 3) is not valid; Appellant's appeal is upheld.
2. This order has been mailed to the parties on November 15, 2010.
3. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: November 15, 2010

  
 Gregory J. Frank, Hearings Officer

GJF:rs

Enclosure

| Exhibit # | Description  | Submitted by    | Disposition |
|-----------|--|-----------------|-------------|
| 1         | Appeal form page 1   | Dufay, Frank    | Received    |
| 2         | Appeal form page 2   | Dufay, Frank    | Received    |
| 3         | 10/4/10 letter, Dufay to Juan G. & Diana M. Lopez/William John Nixon | Dufay, Frank    | Received    |
| 4         | Staff Report   | Dufay, Frank    | Received    |
| 5         | Internet printout  | Dufay, Frank    | Received    |
| 6         | Map  | Dufay, Frank    | Received    |
| 7         | Oregon Secretary of State Corporation Division, Business Name Search | Dufay, Frank    | Received    |
| 8         | Mailing List   | Hearings Office | Received    |
| 9         | Hearing Notice   | Hearings Office | Received    |
| 10        | Log data sheet (dbl-sided)   | Nixon, William  | Received    |
| 11        | Web site printout (4 pgs)  | Nixon, William  | Received    |
| 12        | Photo  | Nixon, William  | Received    |