



# CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

## Hearings Office

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## HEARINGS OFFICER'S ORDER

APPEAL OF PARKE AVENUE LIMOUSINE

CASE NO. 3100425

DATE OF HEARING: December 10, 2010

### APPEARANCES:

Ms. Kathleen Butler, for the City

No one appeared on behalf of the Appellant

HEARINGS OFFICER: Ms. Kimberly M. Graves

### FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Mr. Gary Parke, Appellant's representative, did not appear at the hearing. On December 8, 2010, a typewritten letter was received in the Hearings Officer from Mr. Parke. The letter indicated that Mr. Parke had arranged to be out of state, leaving December 9, 2010, and that he would be unable to attend the hearing on December 10, 2010. Mr. Parke requested that a decision be made in his absence.

Ms. Kathleen Butler, Regulatory Division Manager for the City of Portland Revenue Bureau ("Ms. Butler") appeared and represented the City. Mr. Frank Dufay, Regulatory Program Administrator for the City of Portland Revenue Bureau (Mr. Dufay) appeared as a witness for the City.

Ms. Butler offered Exhibits 1 through, and including, 21 to be admitted into the evidentiary record without objection. The Hearings Officer admitted all offered exhibits into evidence.

Exhibit 6, an October 19, 2010 letter from Mr. Dufay to Appellant, sets out the violations which Appellant is contesting in this proceeding.

Exhibit 6 sets forth allegations made by the City that Appellant violated PCC 16.40.130A and PCC 16.40.190A. As a result of the alleged violations, the City, in Exhibit 6, assessed civil penalties (PCC 16.40.540A). Specifically, the City alleged, in Exhibit 6, that Appellant violated PCC 16.40.130A and

PCC 16.40.130A by dropping off passengers at the Arcadia Ballroom on May 7, 2010 at approximately 8:02 p.m.

PCC 16.40.130A states “no person or entity may conduct business as an LPT for-hire transportation company without a valid, current LPT company permit issued by the City. . .” PCC 16.40.190A states “no LPT vehicle may be used as a for-hire transportation vehicle without a valid and unobstructed decal issued by the City. . .” PCC 16.40.030U defines “operate” as “driving a for-hire vehicle, using a for-hire vehicle to conduct a business, receiving money from the use of a for-hire vehicle, or causing or allowing another person to do the same.”

The Hearings Officer, in this case, relies upon the oral testimony offered by Mr. Dufay on behalf the City at the hearing on December 10, 2010. The Hearings Officer shall inform the reader of this decision whenever the Hearings Officer relies upon any written evidence found in an admitted document.

### **Application of PCC 16.40.130.A and PCC 16.40.190.A to the City’s Alleged Violations**

The first issue to be addressed by the Hearings Officer is whether or not dropping off passengers, within the City of Portland by a limousine, is a violation of either/both PCC 16.40.130.A and/or PCC 16.40.190.A.

The relevant portion of PCC 16.40.130.A states that “no person or entity may conduct business as an LPT for-hire transportation company without a valid, current LPT company permit issued by the City under Chapter 16.40.” The Hearings Officer finds that interpreting the phrase “conduct business as a LPT for-hire transportation company” is central to determining if the City’s alleged violations in Exhibit 6, if proven, would result in violation of PCC 16.40.190.A. In addressing that issue, the Hearings Officer applies the principles of statutory construction as set out in *PGE v. Bureau of Labor and Industries*, 317 Or 606, 6100-12, 859 P2d 1143 (1993). The Hearings Officer’s fundamental task is to discern and, if possible, effectuate the Portland City Council’s intent in enacting PCC 16.40.130.A. The Hearings Officer begins that inquiry by examining the text and context of PCC 16.40.130.A.

PCC 16.40.010 (Purpose) states, in part, that the “purpose of Chapter 16.40 is to provide for the safe, fair and efficient operation of private ‘for-hire’ transportation services.” PCC 16.40.030.CC says, in relevant part, that “Private for-hire transportation” means “providing vehicular or pedicab transportation for compensation of any kind within the Portland City limits.” The word “providing” is not defined in PCC 16.40.030 (definitions section of PCC 16.40) but is defined in the Merriam-Webster Online Dictionary as “to supply or make available (something wanted or needed)” and also as “to make something available.”

The phrase “conduct business as a LPT for-hire transportation company” is not defined in PCC 16.40.030. “Limited Passenger Transportation Company” (LPT Company) is defined in PCC 16.40.030R as “a for-hire transportation company other than a taxi company.” “Limited Passenger Transportation” (LPT) is defined in PCC 16.40.030S as “providing for-hire transportation services with pedicabs or with vehicles other than taxicabs. LPTs include Pedicabs, Executive Sedans, Limousines, Shuttles and SATs.” The word “conduct” is not defined in PCC 16.40.030 but is defined in the Merriam-Webster Online Dictionary as “to direct or take part in the operation or management.” The word “business” is not defined in PCC 16.40.030 but is defined in the Merriam-Webster Online Dictionary as “dealings or transactions especially of an economic nature.”

The Hearings Officer finds that phrase “conduct business” in PCC 16.40.130.A may be reasonably interpreted in the context of the dictionary definitions of “conduct” and “business” and the PCC 16.40.030 definition of “Private for-hire transportation” to mean the provision of motor vehicle services by carrying passengers for a fare within the City of Portland city limits. The Hearings Officer finds the picking up and/or dropping off of passengers, for a fare, within the City of Portland city limits falls within the PCC 16.40.130.A permit requirements. The Hearings Officer also finds that “conduct business” under PCC 16.40.130.A includes other activities necessary to provide for-hire transportation services. The Hearings Officer finds that other activities would include, but are not limited to, dispatching LPTs from a location within the City of Portland limits and advertising LPTs pick-up services within the City of Portland limits.

PCC 16.40.190.A states, in part, that “no LPT vehicle may be used as a for-hire transportation vehicle without a valid and unobstructed decal issued by the City. . .” The phrase “for-hire transportation” is defined in PCC 16.40.030. The term “used” is not defined in PCC 16.40.030 but is defined in the Merriam-Webster-Online Dictionary as “to put into action or service.” The Hearings Officer finds that putting a LPT in action or service as a private for-hire transportation vehicle would include picking up passengers. The Hearings Officer finds that a LPT vehicle is used as a for-hire transportation vehicle, under PCC 16.40.190.A, if the vehicle is involved in actions or service leading up to the carrying of passengers and collecting a fare.

**Is there substantial evidence in the record to support findings that Appellant violated PCC 16.40.130.A and/or PCC 16.40.190.A?**

As stated above, the Hearings Officer finds that a violation of PCC 16.40.130.A and/or PCC 16.40.190.A occurs if the Hearings Officer makes a finding that Appellant picked up a passenger within the Portland city limits.

City witness Mr. Dufay provided first-hand observational testimony related to events he observed. City witness Dufay also testified related to websites which he accessed. Mr. Parke, Appellant, did not testify, but submitted written explanations for his conduct on May 7, 2010 and the current state of his business, Parke Avenue Limousine.

Mr. Dufay, the City of Portland Private For-Hire Transportation Administrator, testified that he observed a 1999 Lincoln Limousine, DMV license Parke3 within the City of Portland limits on May 7, 2010. Mr. Dufay stated that he observed the Limousine outside of the Arcadia ballroom at approximately 8:02 p.m. as the Limousine was dropping off a number of passengers at the prom occurring at the ballroom that evening.

Mr. Dufay also testified that prior to the hearing on December 10, 2010, he searched “online” for advertisements related to Appellant’s business. Ms. Butler submitted Exhibit 21, which contained information related to Appellant’s business, printed from the Internet on December 10, 2010. Mr. Dufay testified that he believed the documents indicated that Mr. Parke was continuing to advertise and solicit business for his limousine company within the City of Portland.

Appellant’s representative, Gary Parke, was not present at the hearing, but presented numerous documents, which were entered into the record as Exhibits 1 and 20, for consideration. Exhibit 1 is the appeal form submitted by Mr. Parke on October 25, 2010. In his written statement on the appeal form,

Mr. Parke indicates that he is “out of the limousine business” and the vehicle in question is rarely used for entertainment purposes. On the evening of May 7, 2010, Mr. Parke writes that he was transporting “my kid” and friends for a 30 minute trip into town to drop them off at their prom. Mr. Parke indicates that he does maintain a website for purposes of representing a “few select limo companies in OR & Wash taking reservation for their cars and taking a percentage for my efforts.”

Mr. Parke indicated in his letter dated December 6, 2010, Exhibit 20, that due to “the economy” his (limousine) business was “destroyed.” Mr. Parke indicated that he thought that he was permitted to use his limousine for transportation for family and friends and on May 7<sup>th</sup>, 2010, he used the limousine to drop off kids at the prom at the Arcadia. Mr. Parke does not indicate where the pick up occurred, but does indicate that the kids were picked up by their parents after the event. Mr. Parke also included a number of photos which he states “show that I have no cars to drive and give you a better perspective on the current circumstances.” Mr. Parke indicates “there is no Parke Avenue Limousine.” Exhibit 20d is a bill of sale dated May 9, 2010 for a vehicle listed as a 1999 Lincoln with license plate number “Parke3.” Exhibit 20e contains 2 photos. The first photo shows a vehicle with the license plate of “Parke2.” The vehicle appears inoperable and a written statement from Mr. Parke indicates that the engine of the vehicle is broken and the vehicle has not been used since January, 2007. The second photo in Exhibit 20e shows the inside of a vehicle, which Mr. Parke writes is his 1958 Rolls Royce. Mr. Parke indicates that there was an electrical fire and that the vehicle is not drivable. Included with the documents submitted by Mr. Parke on December 6, 2010 was a personal check in the amount of \$750; check number 311 written on the KeyBank account of Gary Parke. A photo copy of said check was entered into evidence as Exhibit 20a.

The Hearings Officer finds that the testimony of Mr. Dufay is credible to the extent of his observations on May 7, 2010. The Hearings Officer finds the written testimony of Mr. Parke is credible as it relates to the state of his business and his actions on May 7, 2010.

The Hearings Officer finds, based upon the testimony of Mr. Dufay and the written testimony of Mr. Parke, that on May 7, 2010, Mr. Parke used a 1999 Lincoln Limousine to drop off passengers at the Arcadia Ballroom located within the City of Portland limits. The Hearings Officer finds that no evidence was submitted by either party to identify where the passengers dropped off at the Arcadia Ballroom originated their trip.

The Hearings Officer finds that at the time of the violation on May 7, 2010, the Appellant maintained an online website for the purposes of generating limousine business and that the website indicated that Mr. Parke’s business was “in the Portland and Vancouver areas.” The Hearings Officer finds no information provided by either party to indicate that Mr. Parke’s website advertised transportation services within the City of Portland limits. The Hearings Officer finds that, at the time of the hearing on December 10, 2010, Mr. Parke no longer maintains an online website for his business, and the documents submitted by Ms. Butler in Exhibit 21 are unpersuasive as they contain merely search engine results, and not a direct link to Mr. Parke.

The Hearings Officer did not place any reliance, in making this decision, upon Mr. Dufay’s testimony related to the Internet searched conducted on December 10, 2010 (Exhibit 21). The Hearings Officer placed no reliance upon Exhibit 20 in making this decision.

## **Conclusions**

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 conducted business within the City of Portland limits without a valid, current company permit issued by the City under Chapter 16.40 and/or (2) Appellant’s LPT vehicle was used within the City of Portland limits without having a valid and unobstructed decal issued by the City under Chapter 16.40.

As discussed in the findings above, the Hearings Officer finds that picking up passengers for a fare within the City of Portland limits is the conduct of a LPT for-hire transportation company within the City of Portland in violation of PCC 16.40.130.A. The Hearings Officer finds that the picking up of passengers in a LPT vehicle, within the City of Portland, is providing for-hire transportation and in violation of PCC 16.40.190.A if the LPT vehicle does not display a valid decal issued by the City of Portland. The Hearings Officer finds, based upon the testimony of Mr. Dufay and the written testimony of Mr. Parke, that Mr. Parke did drop off passengers on May 7, 2010 while using a LPT vehicle within the City of Portland limits. The Hearings Officer cannot find any evidence within the record to indicate that Mr. Parke picked up any passengers within the City of Portland limits on May 7, 2010.

The Hearings Officer finds that at the time of the violation on May 7, 2010, Mr. Parke maintained an online website which advertised for-hire transportation services in the Portland and Vancouver areas. The Hearings Officer cannot find any evidence within the record to indicate that Mr. Parke was engaged in the business of picking up passengers, or contracting for the pick up of passengers, within the City of Portland limits.

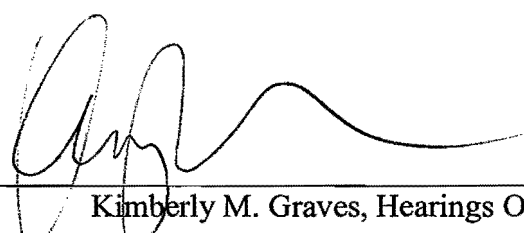
The Hearings Officer finds, based upon the evidence in the record, that the City has failed to meet its burden to prove by a preponderance of the evidence that Parke Avenue Limousine engaged in conduct which was in violation of PCC 16.40.130.A and PCC 16.40.190.A. The Hearings Officer finds the allegations contained in Exhibit 6 are not proven and Appellant’s appeal is granted.

#### ORDER AND DETERMINATION:

1. Allegations contained in Exhibit 6 are not proven; Appellants appeal is granted. Check number 311 submitted by Mr. Parke as payment for the alleged violations shall be returned via US Mail with this order.
2. This order has been mailed to the parties on December 15, 2010.
3. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: December 15, 2010

KMG:rs



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Kimberly M. Graves, Hearings Officer

## Enclosure

<b>Exhibit #</b>	<b>Description</b>	<b>Submitted by</b>	<b>Disposition</b>
1	Appeal form	Dufay, Frank	Received
2	10/19/10 letter, Revenue Bureau to Parke Avenue Limousine	Dufay, Frank	Received
3	Appeal form page 2	Dufay, Frank	Received
4	11/8/10 Staff Report	Dufay, Frank	Received
5	Parke Avenue Limousine website	Dufay, Frank	Received
6	10/19/10 letter, Dufay to Parke Avenue Limousine	Dufay, Frank	Received
7	Certified Mail Envelope to City of Portland Hearings Office	Dufay, Frank	Received
8	5/7/10 Photo	Dufay, Frank	Received
9	Parke Avenue Limousine website	Dufay, Frank	Received
10	DMV info. 1999 Lincoln Towncar	Dufay, Frank	Received
11	DMV info. 1994 Lincoln Towncar	Dufay, Frank	Received
12	DMV info. 1958 Rolls	Dufay, Frank	Received
13	Mailing List	Hearings Office	Received
14	Hearing Notice	Hearings Office	Received
15	Request to postpone hearing	Parke Avenue Limousine,	Received
16	Hearing Notice	Hearings Office	Received
17	Request to reschedule	Butler, Kathleen	Received
18	Updated Mailing List	Hearings Office	Received
19	Hearing Notice	Hearings Office	Received
20	12/6/10 letter from Gary Parke with attachments	Parke Avenue Limousine,	Received
20a	Copy of check #311 for \$750.00 to City of Portland from Gary D. Parke	Parke Avenue Limousine,	Received
20b	10/19/10 letter, Dufay to Parke Avenue Limousine with notations written on it	Parke Avenue Limousine,	Received
20c	11/23/10 memo, Butler to Hearings Office with highlights (copy of Exh. 17)	Parke Avenue Limousine,	Received
20d	DMV Vehicle Bill of Sale	Parke Avenue Limousine,	Received
20e	Photos	Parke Avenue Limousine,	Received
21	Copies of Internet printouts	Butler, Kathleen	Received