



CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF JAMES LOPES

CASE NO. 3110406

DATE OF HEARING: October 20, 2011

APPEARANCES:

Officer Susan Billard, on behalf of the City

Appellant did not appear

HEARINGS OFFICER: Mr. Gregory J. Frank

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Mr. Lopes was mailed a Notice of Hearing, on September 23, 2011, setting forth the date/time/place of a hearing in this matter. The mailed September 23, 2011 Notice of Hearing was returned by the U.S. Postal Service as undeliverable. The September 23, 2011 Notice of Hearing was sent to the address provided by Mr. Lopes on his request for an appeal hearing (Exhibit 1). A second Notice of Hearing was mailed, on September 26, 2011, to Mr. Lopes setting forth a rescheduled hearing date/time. The September 26, 2011 Notice of Hearing was not returned by the U.S. Postal Service. Mr. Lopes did not contact the Hearings Office prior to the hearing and did not attend the hearing at the rescheduled date/time. Portland Police Officer Billard and Portland Patrol Officer Yevgeniy Shevchenko appeared at the hearing and testified on behalf of the City. The Hearings Officer makes this decision based upon the testimony of Officer Billard and Officer Shevchenko and the documents admitted into the evidentiary record (Exhibits 1 through and including 8).

Mr. Lopes received a Notice of Exclusion From City of Portland Parking Garages (621 SW 3rd) on September 12, 2011 for allegedly violating Portland Parking Garage Rules of Conduct #2 (unauthorized entry) and #15 (refusal to obey a reasonable directive of a garage officer). See Exhibit 3. A person violates Rules of Conduct #2 if the person enters a City Parking Garage for any purpose other than to park or retrieve a motor vehicle or do business with a City Parking Garage retail tenant. A person violates Rules of Conduct #15 if the person does not obey a reasonable request/directive of a Person in Charge. A Person in Charge is defined in ORS 164.205 (5) as a representative or employee of the person who has lawful control of the premises by ownership.

Mr. Lopes, in his written request for an appeal hearing (Exhibit 1) states that, "I was not even given a warning before they took away my right to be there."

Officer Shevchenko testified that on September 12, 2011 he was on patrol in the City of Portland Parking Garage located at 621 SW 3rd Avenue (the "Garage"). Officer Shevchenko stated that Garage Rules of Conduct are posted at the entry to all stairwells at the Garage. Officer Shevchenko stated that he contacted Mr. Lopes in the 2nd floor stairwell of the Garage. Officer Shevchenko stated that Mr. Lopes was sitting in the middle of the stairwell, blocking passage for anyone wishing to take the stairs, and reading a book. Officer Shevchenko stated that Mr. Lopes told him that he was reading while waiting for a friend. Officer Shevchenko stated Mr. Lopes indicated neither he nor his friend had a vehicle parked in the Garage. Officer Shevchenko testified that he requested Mr. Lopes provide identification so that a Notice of Exclusion could be completed. Officer Shevchenko stated Mr. Lopes refused to give identification information. Officer Shevchenko stated Mr. Lopes left the Garage and walked north on SW 3rd Avenue. Officer Shevchenko stated he requested police assistance.

Officer Billard testified that in response to Officer Shevchenko's request for assistance she made contact with Officer Shevchenko and Mr. Lopes. Officer Billard stated that Mr. Lopes initially refused to give her identification information.

The Hearings Officer finds that the statement by Mr. Lopes is generally credible and that the testimony of Officer Shevchenko and Officer Billard is very credible. The Hearings Officer finds that Mr. Lopes' statement (Exhibit 1) that he received no *oral* warning that his conduct was a violation of the Rules of Conduct in a Garage is true. However based upon the testimony of Officer Shevchenko, the Hearings Officer finds that the Rules of Conduct for the Garage are posted at all stairwell entrances of the Garage. The Hearings Officer finds that the posting of the Rules of Conduct throughout the Garage constitutes notice of expected/required behavior within the Garage. The Hearings Officer finds that Mr. Lopes was not in the Garage, on September 12, 2011, to park a motor vehicle or to retrieve a parked motor vehicle. The Hearings Officer finds Mr. Lopes' presence in the Garage on September 12, 2011 did violate Rules of Conduct #2 (unauthorized entry). The Hearings Officer finds that Mr. Lopes' refusal to give Officers Shevchenko and Billard identification information is a violation of Rules of Conduct 15 (refusal to obey a reasonable direction of a garage officer).

The Hearings Officer finds the Notice of Exclusion From City of Portland Parking Garages issued to Mr. Lopes on September 12, 2011 is valid.

The Hearings Officer finds that Mr. Lopes filed his request for an appeal hearing on September 12, 2011; the same date he received the Notice of Exclusion From City of Portland Parking Garages. The Hearings Officer finds that the term of the exclusion is 180 days and shall run from the effective date of this Order.

ORDER AND DETERMINATION:

1. The Notice of Exclusion From City of Portland Parking Garages issued to Mr. James Lopes on September 12, 2011 (Exhibit 3) is valid; Mr. Lopes' appeal is denied.

2. The term of the Notice of Exclusion From City of Portland Parking Garages issued to Mr. Lopes shall run from October 26, 2011 through 4:30 p.m. on March 9, 2012.
3. This order has been mailed to the parties on October 21, 2011 and shall become effective on October 26, 2011.
4. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: October 21, 2011



Gregory J. Frank, Hearings Officer

GJF: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	Notice of Exclusion From City of Portland Parking Garages	Complaint Signer's Office,	Received
3a	Issuing Person's Sworn Statement/Affidavit	Complaint Signer's Office,	Received
3b	Portland Patrol Incident Report	Complaint Signer's Office,	Received
4	Special Report	Complaint Signer's Office,	Received
5	Mailing List	Hearings Office	Received
6	Hearing Notice	Hearings Office	Received
7	Request to reschedule	Billard, Officer Susan	Received
8	Hearing Notice	Hearings Office	Received