

CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF NICHOLAS MICHAEL BRAUN

CASE NO. 3110476

[Police Bureau Case No. 11-91023]

PROPERTY: City of Portland Parking Garages – 621 SW 3rd

DATE OF HEARING: November 10, 2011

APPEARANCES:

Mr. Nicholas Braun, Appellant

The City did not appear

HEARINGS OFFICER: Ms. Kimberly M. Graves

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Mr. Braun submitted an appeal form, Exhibit 1, regarding the Notice of Exclusion From City of Portland Parking Garages ("Exclusion," Exhibit 3), which he received on October 14, 2011. Mr. Braun appeared at the scheduled hearing and testified on his own behalf. No one appeared on behalf of the City.

Mr. Braun, in his appeal form, writes,

"I disagree because I was unaware that it was against the law/rules to be in the parking garage. I went up there to site see at night time, not doing any reckless or wrong to my understanding. I now know being in a parking garage with out a vehicle is prohibited and wont enter a garage w/o a vehicle."

At the hearing, Mr. Braun testified that he and his friends had ridden their bikes downtown at night and wanted to look around at the city from the top of the garage. Mr. Braun indicated that while they were on top of the garage, they were contacted by security officers from Portland Patrol Inc. (PPI). Mr. Braun testified that the security officers asked whether he and his friends had a vehicle in the garage. Mr. Braun testified that they told the security officers that they did not, and they were issued exclusions.

The City submitted Exhibits 3 and 6 regarding the Exclusion issued to Mr. Braun on October 14, 2011. Exhibit 3 is a copy of the Notice of Exclusion From City of Portland Parking Garages which lists the conduct leading to issuance of the Exclusion as "Unauthorized Entry." The summary portion of the report reads "In garage w/out a vehicle." The Exclusion indicates that Mr. Braun was in a City of Portland Parking Garage located at 621 SW 3rd when the Exclusion was issued. Exhibit 6 is an Incident Report from PPI regarding the Exclusion issued to Mr. Braun. The report indicates that on October 14, 2011, at 8:33 p.m., two PPI security officers were patrolling the "Smart Park" garage located at 621 SW 3rd when they observed three male subjects in the garage. The PPI officers asked the subjects whether they had a vehicle in the garage, and the subjects replied "no." The PPI officers informed the subjects that it was unlawful to be in the garage without a vehicle. The subjects provided the PPI officers with identifications. One subject was identified as Nicholas Braun.

The Hearings Officer finds that the evidence in the record consists of the exhibits entered into the record. The Hearings Officer admitted Exhibits 1 through, and including, 13 into the evidentiary record on her own motion.

Portland City Code ("PCC") section 16.20.900 B states that, "Any Person in Charge may exclude any person who violates any Rule of Conduct while in or upon any City Parking Garage, from all City Parking Garages for a period of 180 days." PCC section 16.20.900 C provides a list of the Rules of Conduct applicable to City-owned parking garages. PCC section 16.20.900 C 2 states, "No person shall enter or remain for any purpose other than to park or retrieve a motor vehicle or do business with a City parking garage retail tenant."

The Hearings Officer finds that there is no material conflict between the factual information testified to by Mr. Braun at the hearing, and the information provided by the City in Exhibit 6. The Hearings Officer finds that on October 14, 2011, Mr. Braun was in a City of Portland parking garage without a vehicle.

The Hearings Office finds, based upon the evidence in the record, that it is more probable than not that Mr. Braun's conduct on October 14, 2011, in a City of Portland parking garage, was in violation of #2 of the Rules of Conduct. The Hearings Officer finds that the Exclusion issued to Mr. Braun on October 14, 2011 is valid.

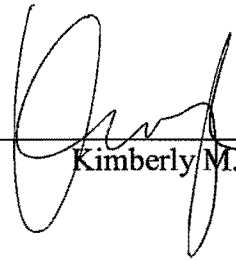
ORDER AND DETERMINATION:

1. The Notice of Exclusion From City of Portland Parking Garages issued on October 14, 2011, (Exhibit 3) is valid; Mr. Braun's appeal is denied.
2. The term of the exclusion began on October 14, 2011, and shall conclude at 4:30 p.m. on April 11, 2012.
3. This order has been mailed to the parties on November 15, 2011, and shall become effective immediately.

4. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: November 15, 2011

KMG:rs



Kimberly M. Graves, Hearings Officer

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 |
| 4 | Notice of Exclusion From City of Portland Parking Garages - Dylan Thomas Barnett | Complaint Signer's Office, | Received |
| 5 | Notice of Exclusion From City of Portland Parking Garages - Saul Esiquio Ordonez | Complaint Signer's Office, | Received |
| 6 | Portland Patrol Incident Report | Complaint Signer's Office, | Received |
| 7 | Special Report | Complaint Signer's Office, | Received |
| 8 | Appeal form page 1a - Dylan Barnett | Complaint Signer's Office, | Received |
| 9 | Notice of Exclusion From City of Portland Parking Garages - Dylan Thomas Barnett | Complaint Signer's Office, | Received |
| 10 | Appeal form page 1a - Saul Ordonez | Complaint Signer's Office, | Received |
| 11 | Notice of Exclusion From City of Portland Parking Garages | Complaint Signer's Office, | Received |
| 12 | Mailing List | Hearings Office | Received |
| 13 | Hearing Notice | Hearings Office | Received |