

# CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

## Hearings Office

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## HEARINGS OFFICER'S ORDER

### APPEAL OF DYLAN THOMAS BARNETT

CASE NO. 3110477

[Police Bureau Case No. 11-91023]

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

DATE OF HEARING: November 10, 2011

### APPEARANCES:

None

HEARINGS OFFICER: Ms. Kimberly M. Graves

### FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Mr. Barnett submitted an appeal form, Exhibit 1, regarding the Notice of Exclusion From City of Portland Parking Garages ("Exclusion," Exhibit 7), which he received on October 14, 2011. Contained on the appeal form completed by Mr. Barnett is a mailing address. The Hearings Office mailed to Mr. Barnett, at the address listed on the appeal form, a Notice of Hearing (Exhibit 12). The Notice of Hearing (Exhibit 12) was not returned by the U. S. Postal Service. Mr. Barnett did not contact, by any means, the Hearings Office after the mailing of the Notice of Hearing and prior to the hearing. Mr. Barnett did not appear at the scheduled hearing. No one appeared on behalf of the City.

Mr. Barnett, in his appeal form, writes,

"I disagree with the exclusion because I was not aware of the rules of the garage and I was not causing any trouble. I have an extremely bad bladder and had to go at that moment, no business would let me use their restroom either."

Mr. Barnett did not appear or submit any additional documents for consideration at the hearing.

The City submitted Exhibits 7 and 10 regarding the Exclusion issued to Mr. Barnett on October 14, 2011. Exhibit 7 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" and "Unauthorized camping, bathing or urination or defecation." The summary portion of the report reads, "In garage without a vehicle/urinating in garage." The Exclusion indicates that Mr. Barnett was in a City of Portland parking

garage located at 621 SW 3<sup>rd</sup> when the Exclusion was issued. Exhibit 10 is an Incident Report from Portland Patrol Inc. (PPI) regarding the Exclusion issued to Mr. Barnett. 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 3<sup>rd</sup> when they observed three male subjects in the garage. The report indicates that one subject was urinating when the officers first noticed him. 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, and that it was unlawful to urinate within the garage. The subjects provided the PPI officers with identifications. The subject who had previously been seen urinating was identified as Dylan Barnett.

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, 12 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." PCC section 16.20.900 C 4 states, "No person shall use City parking garages for the purpose of housing or camping, including but not limited to, . . . use as a restroom."

The Hearings Officer finds that there is no material conflict between the factual information submitted by Mr. Barnett in Exhibit 1, and the information provided by the City in Exhibit 10. The Hearings Officer finds that on October 14, 2011, Mr. Barnett was in a City of Portland parking garage without a vehicle, and while in the garage, Mr. Barnett urinated on the ground.

The Hearings Office finds, based upon the evidence in the record, that it is more probable than not that Mr. Barnett's conduct on October 14, 2011, in a City of Portland parking garage, was in violation of Rules of Conduct Rules 2 and 4. The Hearings Officer finds that the Exclusion issued to Mr. Barnett on October 14, 2011, is valid.

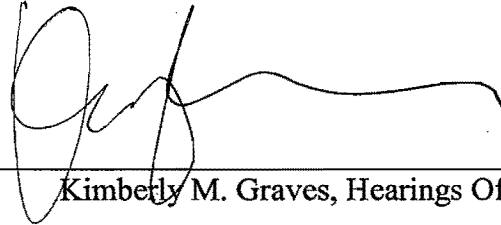
#### ORDER AND DETERMINATION:

1. The Notice of Exclusion From City of Portland Parking Garages issued on October 14, 2011 (Exhibit 3) is valid; Mr. Barnett'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

<b>Exhibit #</b>	<b>Description</b>	<b>Submitted by</b>	<b>Disposition</b>
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	Appeal form page 1a - Nick Braun	Complaint Signer's Office,	Received
4	Notice of Exclusion From City of Portland Parking Garages - Nicholas Michael Braun	Complaint Signer's Office,	Received
5	Appeal form page 1a - Saul Ordonez	Complaint Signer's Office,	Received
6	Notice of Exclusion From City of Portland Parking Garages - Saul Esequio Ordonez	Complaint Signer's Office,	Received
7	Notice of Exclusion From City of Portland Parking Garages	Complaint Signer's Office,	Received
8	Notice of Exclusion From City of Portland Parking Garages - Saul Esiquio Ordonez	Complaint Signer's Office,	Received
9	Notice of Exclusion From City of Portland Parking Garages - Nicholas Michael Braun	Complaint Signer's Office,	Received
10	Portland Patrol Incident Report	Complaint Signer's Office,	Received
11	Mailing List	Hearings Office	Received
12	Hearing Notice	Hearings Office	Received