

# CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

## Hearings Office

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## HEARINGS OFFICER'S ORDER

### APPEAL OF VLADIMIR ROMASHCHENKO

CASE NO. 3110481

[Police Bureau Case No. 11-91043]

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

DATE OF HEARING: November 10, 2011

### APPEARANCES:

Mr. Vladimir Romashchenko, Appellant

The City did not appear

HEARINGS OFFICER: Ms. Kimberly M. Graves

### FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Mr. Romashchenko submitted an appeal form, Exhibit 1, regarding the Notice of Exclusion From City of Portland Parking Garages (“Exclusion,” Exhibit 11), which he received on October 16, 2011. Mr. Romashchenko appeared at the scheduled hearing and testified on his own behalf. No one appeared on behalf of the City.

Mr. Romashchenko, in his appeal form, writes, “There were no signs that stated that we couldn’t walk on the stairs. They were by the elevators inside but we came in outside. We weren’t even in the garage, we were on the stairs. We have pictures of the entrance to the stairs and there are no signs. The big guy was being mean to me.” At the hearing, Mr. Romashchenko indicated that he wished to rely on his written statement, and not provide further testimony.

The City submitted Exhibits 11 and 13 regarding the Exclusion issued to Mr. Romashchenko on October 16, 2011. Exhibit 11 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 vehicle.” The Exclusion indicates that Mr. Romashchenko was in a

City of Portland Parking Garage located at 621 SW 3<sup>rd</sup> when the Exclusion was issued. Exhibit 13 is an Incident Report from Portland Patrol Inc. (PPI) regarding the Exclusion issued to Mr. Romashchenko. The report indicates that on October 16, 2011, at 12:50 a.m., two PPI security officers were patrolling the "Smart Park" garage located at 621 SW 3<sup>rd</sup> when they observed six subjects near the stairwell on Level 8. 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 Vladimir Romashchenko.

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, 16 into the evidentiary record on her own motion, and without objection.

Portland City Code ("PCC") section 16.20.900 states that "City Parking Garages include any publically or privately owned real property, and the buildings, structures and facilities thereon, placed under the jurisdiction of the City for parking garage purposes, . . ." PCC 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 provided by Mr. Romashchenko in Exhibit 11, and the information provided by the City in Exhibit 13. The Hearings Officer finds that on October 16, 2011, Mr. Romashchenko was in the stairwell of a City of Portland parking garage at a time in which he did not have a vehicle parked within the garage.

The Hearings Office finds that the stairwell of a parking garage is considered to be under the jurisdiction of the City for enforcement purposes because the stairwell is a portion of the parking garage structure. The Hearings Officer finds that it is more probable than not that Mr. Romashchenko's conduct on October 16, 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. Romashchenko October 16, 2011, is valid.

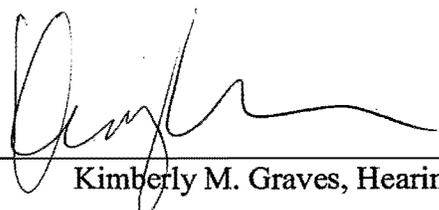
#### ORDER AND DETERMINATION:

1. The Notice of Exclusion From City of Portland Parking Garages issued on October 16, 2011, (Exhibit 3) is valid; Mr. Romashchenko's appeal is denied.
2. The term of the exclusion began on October 16, 2011, and shall conclude at 4:30 p.m. on April 13, 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 - Valeriy Ndrunik	Complaint Signer's Office.	Received
4	Appeal form page 1a - Yulia Tomenko	Complaint Signer's Office.	Received
5	Notice of Exclusion From City of Portland Parking Garages - Yulia Tomenko	Complaint Signer's Office.	Received
6	Appeal form page 1a - Irina Maksimenko	Complaint Signer's Office.	Received
7	Notice of Exclusion From City of Portland Parking Garages - Irina Maksimenko	Complaint Signer's Office.	Received
8	Notice of Exclusion From City of Portland Parking Garages - Yulia Tomenko	Complaint Signer's Office.	Received
9	Notice of Exclusion From City of Portland Parking Garages - Irina Maksimenko	Complaint Signer's Office.	Received
10	Notice of Exclusion From City of Portland Parking Garages - Valeriy Andronik	Complaint Signer's Office.	Received
11	Notice of Exclusion From City of Portland Parking Garages - Vasily Romshchemk	Complaint Signer's Office.	Received
12	Notice of Exclusion From City of Portland Parking Garages - Aleksey Romshchemk	Complaint Signer's Office.	Received
13	Portland Patrol Incident Report	Complaint Signer's Office.	Received
14	Special Report	Complaint Signer's Office.	Received
15	Mailing List	Hearings Office	Received
16	Hearing Notice	Hearings Office	Received

## ORS 34.010 et seq

**NOTE:** The following excerpt from the 2009 Oregon Revised Statutes is provided to you only as a courtesy. The City of Portland makes no representation as to its accuracy or applicability and shall not have any liability for any losses caused by reliance on this information. Any person or entity that relies on this information does so at his/her/its own risk.

Appeals of Hearings Officer decisions are not filed with the Hearings Office. Consequently, the Hearings Office is unable to interpret or answer questions related to appealing a decision of the Hearings Officer. If you need additional guidance, you may wish to consult an attorney.

**34.010 Former writ of certiorari as writ of review.** The writ heretofore known as the writ of certiorari is known in these statutes as the writ of review.

**34.020 Who may obtain review; intermediate orders reviewable.** Except for a proceeding resulting in a land use decision or limited land use decision as defined in ORS 197.015, for which review is provided in ORS 197.830 to 197.845, or an expedited land division as described in ORS 197.360, for which review is provided in ORS 197.375 (8), any party to any process or proceeding before or by any inferior court, officer, or tribunal may have the decision or determination thereof reviewed for errors, as provided in ORS 34.010 to 34.100, and not otherwise. Upon a review, the court may review any intermediate order involving the merits and necessarily affecting the decision or determination sought to be reviewed.

**34.030 Jurisdiction to grant writ; petition for writ; time limit.** The writ shall be allowed by the circuit court, or, in counties where the county court has judicial functions, by the county court wherein the decision or determination sought to be reviewed was made, upon the petition of the plaintiff, describing the decision or determination with convenient certainty, and setting forth the errors alleged to have been committed therein. The petition shall be signed by the plaintiff or the attorney of the plaintiff, and verified by the certificate of an attorney to the effect that the attorney has examined the process or proceeding, and the decision or determination therein, and that it is erroneous as alleged in the petition. A writ shall not be allowed unless the petition therefor is made within 60 days from the date of the decision or determination sought to be reviewed.

**34.040 When allowed.** (1) The writ shall be allowed in all cases in which a substantial interest of a plaintiff has been injured and an inferior court including an officer or tribunal other than an agency as defined in ORS 183.310 (1) in the exercise of judicial or quasi-judicial functions appears to have:

(a) Exceeded its jurisdiction;

- (b) Failed to follow the procedure applicable to the matter before it;
  - (c) Made a finding or order not supported by substantial evidence in the whole record;
  - (d) Improperly construed the applicable law; or
  - (e) Rendered a decision that is unconstitutional.
- (2) The fact that the right of appeal exists is no bar to the issuance of the writ.

**34.050 Plaintiff's undertaking.** Before allowing the writ, the court shall require the plaintiff to give an undertaking to its approval, with one or more sureties, in the sum of \$100, to the effect that the plaintiff will pay all costs and disbursements that may be adjudged to the defendant on the review.

**34.060 To whom directed; return.** The writ shall be directed to the court, officer, or tribunal whose decision or determination is sought to be reviewed, or to the clerk or other person having the custody of its records or proceedings, requiring return of the writ to the circuit court, with a certified copy of the record or proceedings in question annexed thereto, so that the same may be reviewed by the circuit court. The court allowing the writ shall fix the date on which it is to be returned, and such date shall be specified in the writ.

**34.070 Stay of proceedings.** In the discretion of the court issuing the writ, the writ may contain a requirement that the defendant desist from further proceedings in the matter to be reviewed, whereupon the proceedings shall be stayed accordingly.

**34.080 Issuance and service of writ.** Upon the filing of the order allowing the writ, and the petition and undertaking of the plaintiff, the clerk shall issue the writ, as ordered. The writ shall be served by delivering the original, according to the direction thereof, and may be served by any person authorized to serve a summons. A certified copy of the writ shall be served by delivery to the opposite party in the suit or proceeding sought to be reviewed, at least 10 days before the return of the original writ.

**34.090 Order for further return.** If the return to the writ is incomplete, the court may order a further return to be made.

**34.100 Power of court on review; appeal.** Upon the review, the court shall have power to affirm, modify, reverse or annul the decision or determination reviewed, and if necessary, to award restitution to the plaintiff, or to direct the inferior court, officer, or tribunal to proceed in the matter reviewed according to its decision. From the judgment of the circuit court on review, an appeal may be taken in like manner and with like effect as from a judgment of a circuit court in an action.