



Hearings Office

City of Portland

1900 SW 4th Avenue, Room 3100, Portland, OR 97201

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HEARINGS OFFICER'S ORDER

CITY OF PORTLAND, petitioner, vs. 3300 NE Broadway LLC and
Grant Park LLC respondents

CASE NUMBER: 2230007
(Bureau Case Number 23-014490 HS)

PROPERTY: 3312 NE Broadway

LEGAL DESCRIPTION:
RULLMANS ADD; LOT 1-3; EXC R/W; EXC R/W, W4.7' OF LOT 4EXC; 1N1E25DC 16500
TAX# R732300010

City of Portland, County of Multnomah, State of Oregon

DATES OF HEARING: December 12, 2023 and January 9, 2024

DATE OF ORDER: January 23, 2024

HEARINGS OFFICER: Nancy Hochman

BACKGROUND

On November 16, 2023, Mike Masat, Senior Housing Inspector (Inspector Masat) for the City of Portland (City) Bureau of Development Services (the Bureau), filed a City Code Violation Complaint with the Hearings Office (Exhibit 1), alleging violations of Portland City Code (Code) 29.35.060.D and 27.40.040.K at the property located at 3312 NE Broadway, Portland, Oregon (the Subject Property). On November 21, 2023, the Bureau mailed a Notice of Hearing to 3300 NE Broadway LLC & Grant Park Parking LLC (collectively, Respondent) at 127 E Main St., Ste. 301, Missoula MT 59802 (Hearing Notice) (Exhibit 9).

Inspector Masat appeared at the hearing scheduled for December 12, 2023. The Hearings Officer found that Respondent, who failed to appear, received adequate notice of the hearing. The Hearings Officer found that the complaint (Exhibit 1) did not meet

the requirements of the Code and continued the hearing to January 9, 2024 (Continued Hearing) (Exhibit 11). The City filed (i) an amended complaint (Exhibit 13) (Complaint) and (ii) proof of service on Respondent on December 22, 2023, of the Complaint and notice of the Continued Hearing (NOH). (Exhibit 14).

The NOH was not returned by the U.S. Postal Service as undeliverable. Respondent did not contact the Hearings Office after the NOH was mailed and before the beginning of the Continued Hearing. The Hearings Officer finds that adequate notice has been provided to Respondent.

Inspector Masat appeared at the Continued Hearing to testify on behalf of the City. Respondent failed to appear at the Continued Hearing. The Hearings Officer makes this decision based upon the record as a whole, which includes Inspector Masat's testimony and documents admitted into evidence (Exhibits 1 through and including 16).

In Exhibit 13 the City alleges the following violations exist at the Subject Property:

1. Exterior brick, mortar joints and parge coat are damaged, deteriorated, or missing. This presents a safety hazard from falling objects. 29.35.060(D), 29.40.020(K)
2. Windows throughout the vacant property are damaged. This presents a safety hazard from falling glass. 29.40.020(K)
3. Structure is open to entry and not secured to prevent access by unauthorized persons. 29.20.010(B).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On November 1, 2023, Inspector Masat issued to Respondents a Notice Of Violation - Property Maintenance Code (Notice of Violation) providing that substandard conditions of which Respondent was notified on August 17, 2023, still existed at the Subject Property.

Code 29.10.020.YY defines "Owner" as follows: "The person whose name and address is listed as the owner of the property by the County Tax Assessor on the County Assessment and Taxation records." Exhibit 3 is a copy of the Multnomah County Tax Assessor's online records. The Hearings Officer finds that Respondent is the Owner of the Subject Property.

The Hearings Officer now determines whether there is substantial evidence in the record to demonstrate the existence of the violations listed in Exhibit 13.

Inspector Masat informed the Hearings Officer at the Continued Hearing that Violations #2 and #3 on Exhibits 13 and 16 have been corrected. Therefore, the Hearings Officer addresses only Violation #1.

Violation 1. Exterior brick, mortar joints and parge coat are damaged, deteriorated, or missing, a potential safety hazard from falling objects. **Code 29.35.060(D), 29.40.020(K).**

Code 29.35.060.D provides, "Exterior brick, mortar joints and parge coat are damaged, deteriorated, or missing. This presents a potential safety hazard from falling objects"

Code3 29.40.020(K) provides regarding Dangerous Structures:

"Any structure which has any or all of the following conditions or defects to the extent that life, health, property, or safety of the public or the structure's occupants are endangered, shall be deemed to be a dangerous structure and such condition or defects shall be abated pursuant to Sections 29.60.050 and 29.60.080 of this Title.

...

[K] 1. Whenever, for any reason, the structure, or any portion thereof, is manifestly unsafe for the purpose for which it is lawfully constructed or currently is being used; or

2. Whenever a structure is structurally unsafe or is otherwise hazardous to human life, including but not limited to whenever a structure constitutes a hazard to health, safety, or public welfare by reason of inadequate maintenance, dilapidation, unsanitary conditions, obsolescence, fire hazard, disaster, damage, or abandonment."

Inspector Masat testified, and the Hearings Officer finds, by a preponderance of the evidence, that:

- The failing parge coat that was falling on the sidewalk, as reflected in the photographs on Exhibit 2, page 2, has been corrected via a combination of a windstorm and Respondent's removal of the rest of this building coating.

-
- The southwest corner of the building is in the same state it was when the photographs in Exhibit 2 were taken on October 31, 2023:



Bricks are missing and the remaining ones, at an angle they are not meant to be. The mortar is significantly compromised, as reflected by the fact that vegetation is growing out of the corner of the building.¹

- The neighborhood where the Subject Property is located, which includes stores, a park, and two schools nearby, has heavy pedestrian use.
- The building is a safety hazard, due to a significant danger of bricks falling.
- The building is vacant but has been broken into episodically. There have been two housing (camping) complaints and three nuisance complaints to the Bureau in the past five years.
- While the Bureau's enforcement case was opened in February, 2023, no action was taken to address the conditions, including prevention of unauthorized entry via window repair, until after this hearing was commenced on December 12, 2023.

¹ The vegetation has been cut back since the photograph above was taken, but it still remains in the same location on the Subject Premises.

There Hearings Officer finds that the Bureau has proven a violation of Code sections Code 29.35.060.D and 29.40.020.K by reliable, probative, and substantial evidence.

Relief Requested

In Exhibit 13 Inspector Masat sought the following relief:

A. Correction of the violations and compliance with City Codes; respondent(s) to undertake all actions necessary or appropriate to correct such violations(s) and/or prevent recurrence.

B. Civil Penalty in the amount of \$1,270 pursuant to Code Hearings Officer Rule, ARB-ADM-9.01, Section Z(1)(g), for cost recovery, based upon 5 BDS inspections @ \$184 per inspection for a total of \$920 and one title report at the cost of \$350. Inspection numbers are based on all inspections conducted for investigation of Title 29 violations at this property since the initiation of the investigation of the subject violation case.

C. Civil penalty in the amount of \$25,000 for aggravating circumstances pursuant to Code Hearings Officer Rule, ARB-ADM-9.01 for failure to correct violations.

D. Respondent to remedy cited structure violations by way of repair. For the purposes of this hearing, 'repair' means completion of the following actions:

1. Mitigate hazard from broken window glass by one, or a combination of, the following actions:

- Removal of broken glass from panes
- Board over windows to prevent falling glass
- Replace broken glass with new panes

2. Remove loose parge coat at west face of building.

3. Have a licensed mason inspect exterior of structure and provide BDS a letter indicating recommended masonry repairs or removal to mitigate any fall hazards. Licensed masonry contractor to make repairs and provide photos to BDS showing completed work.

E. Respondent to complete all corrective work as outline in D (above) within 20 days of the effective date of the Code Hearings Officer's Order. Failure to meet

this deadline to result in additional penalties of \$1,000 a day, based on factors listed in the Hearings Officer Rule ARB-ADM-9.01, Section Z (1). 22.05.010(A.5).

F. Should Respondent fail to mitigate hazards as outlined in D.1 (above) within 20 days of the effective date of the Code Hearings Officer's Order, the city requests authority to board up ground level doors and windows as outline in H. (below) and remove broken window glass from any damaged pane(s).

G. Within 20 days of the effective date of the Code Hearings Order, respondent to terminate all occupancy of the subject property (building and grounds) and maintain subject property free of all occupancy and attractants for occupancy including, but not limited to, occupancy of the subject structures, any camping structures, temporary living structures, or any motor vehicle, vessel, or item which may be used for shelter, such as tents, tarps, motor homes, trailers, pickup campers, cars, boats or storage containers. Failure to meet this requirement to result in City vacation as defined in below.

H. Vacation of the property; Vacation of the property in its entirety and ensuring security by board-up of all windows, doors, and points of access to restrict entry is requested. Vacation to include the primary structure, any campers, trailers, sheds, tents or bare ground, and to include any unauthorized persons on the property. Vacation to include the removal or towing of any camping structures, temporary living structures, or any motor vehicle or vessel which may be used for shelter, such as tents, motor homes, trailers, pickup campers, cars, boats or storage containers. Vacation to include installation of temporary security fencing as appropriate to deter unauthorized access of the property structures and grounds. Property shall remain vacant and boarded to prevent unauthorized entry until the violations are corrected. In the event the City confirms unauthorized entry, while the vacation order is in effect, and/or removal of the security board up, the City shall be authorized to summarily board up and secure the property until the vacation order is no longer in effect. Per PCC 29.60.070, in order to secure the property and maintain it against entry, the City shall be authorized to summarily board up the property.

I. Recurrence of violations: If, during the Hearings Officer's jurisdiction of this case, Nuisance or Housing Code violations reoccur, summary abatement at the property is authorized, per PCC 29.60.070, in order to secure the property and maintain it against nuisance violations, the City shall be authorized to summarily abate the conditions without notice. This applies to an accumulation of trash and debris or non-trash on the property, removal or board up of broken

windowpanes, overgrowth of grass and weeds, disabled vehicles, unsecured structures, tents, boats and the presence of motor homes or trailers, or other PCC Title 29 violations.

J. Penalties and fees incurred under the Hearings Officer's Order, shall be processed per PCC 22.06.010 and liens applied through the Hearings Office.

K. The Code Hearings Officer's Order, including deadlines, to be transferrable to subsequent owners of the subject property in the event of property transfer or sale. Respondent to be required to disclose terms of the Code Hearings Order to prospective purchasers during the Hearings Officer's jurisdiction.

L. Hearings officer to retain jurisdiction in this case for a period of three years.

At the Hearing, Inspector Masat withdrew his request for the relief under sections C and F, above. The Hearings Officer finds that all the remaining requested relief is appropriate.

Inspector Masat moved at the Continued Hearing to amend the Complaint to add the following additional relief:

M. If a recurrence of a violation found and the Bureau notifies Respondent of the recurrence, then Respondent shall have thirteen days (ten days to correct plus three days for mailing) to correct the recurred violation. Failure to correct the recurred violation shall result in a \$1000 per day civil penalty.

Portland Hearings Office Rule ADM 9.01.Z.1 provides that in establishing civil penalties for a Code violation(s), the Hearings Officer may consider several factors and must cite those found applicable.

The Hearings Officer finds the additional civil penalties under Relief Requested Sections E and Section M, above, appropriate, based on the following aggravating factors listed in Code ARB-ADM-9.01.Z.1:

ADM-9.01.Z.1.c- The gravity and magnitude of the violation(s) and whether the violation(s) was repeated or continuous: The gravity of the violation is high because someone walking on the sidewalk could be killed or seriously injured by falling bricks.

ADM-9.01.Z.1.d - Whether the violation was due to an intentional act of Respondent, the Respondent's negligence, or an unavoidable accident or other conditions or

circumstances beyond the Respondent's reasonable control: The violations here are due to Respondent's negligence and not due to accident or other circumstances beyond the Respondent's reasonable control.

ADM-9.01.Z.1.e - The opportunity to and degree of difficulty involving in correcting the violation: Respondent has had ample opportunity to correct the violation and has not asserted that there is a great degree of difficulty involving in correcting the violation.

ADM-9.01.Z.1.f - The economic or financial benefit accrued or likely to accrue to the Respondent because of the violation: Respondent has benefited financially by not laying out the funds necessary for repair.

ADM-9.01.Z.1.h. That rule provides:

- h. The economic and financial conditions of the Respondent.
- i. The Respondent(s) bears the burden of proof and the burden of coming forward with evidence regarding the Respondent's economic and financial condition.
- ii. Unless a Respondent proves otherwise, the Hearings Officer may presume that the Respondent's economic and financial condition would support the imposition of any civil penalty permitted by law.

The Hearings Officer presumes that Respondent's economic and financial condition supports the imposition of the civil penalties imposed herein.

ORDER AND DETERMINATION:

1. Respondent shall correct all violations set forth on Exhibit 13 and shall undertake all actions necessary to prevent recurrence of the violations.

Pursuant to Code 22.05.010.A.5, a civil penalty in the amount of \$1,270 is hereby imposed, said penalty to be due and payable immediately, and if not paid by 4:30 p.m. on February 6, 2024, shall be made a lien against the Subject Property on February 7, 2024, if the Bureau notifies the Hearings Office in writing that the civil penalty was not paid by the deadline imposed.

2. Respondent shall remedy cited structure violations by way of repair. For the purposes of this hearing, 'repair' means completion of the following actions:
 1. Mitigate hazard from broken window glass by one, or a combination of, the following actions:
 - Removal of broken glass from panes
 - Board over windows to prevent falling glass
 - Replace broken glass with new panes
 2. Remove loose parge coat at west face of building.
 3. Have a licensed mason inspect exterior of structure and provide BDS a letter indicating recommended masonry repairs or removal to mitigate any fall hazards. Licensed masonry contractor to make repairs and provide photos to BDS showing completed work.²
3. Respondent shall complete all corrective work as outline in section 2.3 (above) within 20 days of the effective date of the Code Hearings Officer's Order. Failure to meet this deadline to result in additional penalties of \$1,000 a day, based on factors listed in the Hearings Officer Rule ARB-ADM-9.01, Section Z.1; Code 22.05.010.A.5.
4. Should Respondent fail to mitigate hazards as outlined in section 2.3, above, within 20 days of the effective date of this Order, the City has the authority to board up ground level doors and windows as outline in 6 (below) and remove broken window glass from any damaged pane(s).
5. Within 20 days of the effective date of the Code Hearings Order, respondent shall terminate all occupancy of the subject property (building and grounds) and maintain subject property free of all occupancy and attractants for occupancy including, but not limited to, occupancy of the subject structures, any camping structures, temporary living structures, or any motor vehicle, vessel, or item which may be used for shelter, such as tents, tarps, motor homes, trailers, pickup campers, cars, boats or storage containers. Failure to meet this requirement to result in City vacation as defined in below.
6. Vacation of the property; Vacation of the property in its entirety and ensuring security by board-up of all windows, doors, and points of access to restrict entry

² Items 3.2 and 3.3, above have been mitigated but remain here for purposes of recurrence penalties.

is requested. Vacation to include the primary structure, any campers, trailers, sheds, tents or bare ground, and to include any unauthorized persons on the property. Vacation to include the removal or towing of any camping structures, temporary living structures, or any motor vehicle or vessel which may be used for shelter, such as tents, motor homes, trailers, pickup campers, cars, boats or storage containers. Vacation to include installation of temporary security fencing as appropriate to deter unauthorized access of the property structures and grounds. Property shall remain vacant and boarded to prevent unauthorized entry until the violations are corrected. In the event the City confirms unauthorized entry, while the vacation order is in effect, and/or removal of the security board up, the City shall be authorized to summarily board up and secure the property until the vacation order is no longer in effect. Per Code 29.60.070, in order to secure the property and maintain it against entry, the City shall be authorized to summarily board up the property.

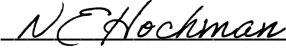
7. Recurrence of violations: If, during the Hearings Officer's jurisdiction of this case, Nuisance or Housing Code violations reoccur, summary abatement at the property is authorized, per Code 29.60.070, in order to secure the property and maintain it against nuisance violations, the City shall be authorized to summarily abate the conditions without notice. This applies to an accumulation of trash and debris or non-trash on the property, removal or board up of broken windowpanes, overgrowth of grass and weeds, disabled vehicles, unsecured structures, tents, boats and the presence of motor homes or trailers, or other Code Title 29 violations.

If a recurrence of a violation found and the Bureau notifies Respondent of the recurrence, Respondent shall have thirteen days from the date the notification was mailed to correct the recurred violation. Failure to correct the recurred violation shall result in a \$1000 per day civil penalty, which shall become a lien on the Subject Property if the Bureau notifies the Hearings Office in writing that the civil penalty was not paid by the deadline imposed.

8. Penalties and fees incurred under the Hearings Officer's Order, shall be processed per Code 22.06.010 and liens applied through the Hearings Office.
9. The terms of this Order, including deadlines, are transferrable to subsequent owners of the subject property in the event of property transfer or sale. Respondent is required to disclose terms of this Order to prospective purchasers during the Hearings Office's jurisdiction.

10. The Hearings Office retains jurisdiction in this case for a period of three years.
11. The City shall have the right to seek one or more Supplemental Orders whereby the Hearings Officer assesses additional civil penalties arising from inspections, vacation(s), security board-up(s), or summary nuisance abatement(s) at the Subject Property. The City shall process all requests for additional civil penalties and/or liens per Code 22.06.010. Any unpaid additional civil penalties assessed under this paragraph shall become liens against the Subject Property after the Bureau notifies the Hearings Office in writing that the civil penalty was not paid by the deadline imposed in the Supplemental Order.
12. This Order has been mailed to the parties on January 23, 2024, and shall become final and effective February 6, 2024. Any objections to this order must be in writing and received by the Code Hearings Office prior to the effective date.
13. The Hearings Officer retains jurisdiction over this case until January 23, 2027, and in accordance with Code 22.03.100, unless the City or Respondent (or a successor in interest) requests in writing that the case remain open past January 23, 2027, the case shall be closed on January 23, 2027.
14. Pursuant to Code 22.03.115, either party may file a petition for reconsideration or rehearing on a final order with the Code Hearings Officer within 30 calendar days after the order is mailed. To be considered, the petition must set forth the specific ground or grounds for requesting the reconsideration or rehearing.
15. This Order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: January 23, 2024



Nancy Hochman, Hearings Officer

NH:c3

Enclosure

NOTICE OF CIVIL PENALTY

Respondents: 3300 NE Broadway LLC and Grant Park LLC
Case No.: 2230007 (Bureau 23-014490 HS)
Property: 3312 NE Broadway
Dates of Hearing: December 12, 2023 and January 9, 2024

Civil penalty imposed \$1,270.00

PAYMENT DUE:
4:30 p.m. on February 6, 2024

Make check payable to the City of Portland and include either a copy of the order or the property address and hearing number. Mail or deliver to the following address:

City of Portland - BDS
Attn: Property Compliance Division
1900 SW 4th Avenue, Suite 5000
Portland, OR 97201

IMPORTANT

If the unsuspended portion of the civil penalty is not paid by the date indicated, the penalty amount will be made a lien against the property and appropriate legal collection proceedings initiated by the City Attorney.

Code Hearings Office (503) 823-7307



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Exhibits, Orders, and Other Attachments

Number	Title	Status
Exhibit 1	Complaint	Accepted
Exhibit 2	Attachment A - violation photos	Accepted
Exhibit 3	Multnomah County - ownership documentation	Accepted
Exhibit 4	Notice of Violation - referral to CHO	Accepted
Exhibit 5	Code Violation Hearing Request Form	Accepted
Exhibit 6	International Mailing Party Address	Accepted
Exhibit 7	Notice Of Hearing	Accepted
Exhibit 8	Statement Of Rights	Accepted
Exhibit 9	Certificate of Service	Accepted
Exhibit 10	Notice of Hearing Continuance	Accepted
Exhibit 11	Hearing Officer Interim Order	Accepted
Exhibit 12	City email and motion	Accepted
Exhibit 13	Amended Complaint	Accepted
Exhibit 14	Certificate of Service	Accepted
Exhibit 15	Photo Journal	Accepted
Exhibit 16	Notice of Violations	Accepted



Your Right to Appeal the Hearings Officer's Decision

If you disagree with the Hearings Officer's Decision, you may file a petition with the Multnomah County Circuit Court. This process is called a Writ of Review. This process is governed by Oregon Revised Statutes Section 34.010 and Sections immediately thereafter.

If you have procedural questions about the Writ of Review process, please contact:

Multnomah County Circuit Court
Presiding Judge
1200 SW 1st Avenue, 7th Floor
Portland, OR 97204
971-274-0660 (Writs)

mul.presiding@OJD.state.or.us

<https://www.courts.oregon.gov/courts/multnomah>

NOTICE

The Hearings Office cannot provide any legal advice or assist with appealing the Hearings Officer's decision.

If you wish to speak to a lawyer or are unsure whether you need to speak with a lawyer, please contact the Oregon State Bar Lawyer Referral Service at (503) 684-3763 or <https://www.osbar.org/public/ris/>

Legal resources for low-income individuals and seniors in Oregon may be found at <https://oregonlawhelp.org>