



# CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

## Hearings Office

1900 SW 4<sup>th</sup> Avenue, Room 3100

Portland, OR 97201

phone: (503) 823-7307 - fax: (503) 823-4347

web: [www.portlandoregon.gov/auditor/hearings](http://www.portlandoregon.gov/auditor/hearings)



## HEARINGS OFFICER'S ORDER

### APPEAL OF MICHAEL O'CALLAGHAN

CASE NO. 3110038

[Police Bureau Case No. 11-6826]

PARK: Springwater

DATE OF HEARING: February 22, 2011

### APPEARANCES:

Mr. Michael O'Callaghan, Appellant

Officer S. Palmiter, for the City

Kurt Nelson, for the City

HEARINGS OFFICER: Mr. Gregory J. Frank

### FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Mr. O'Callaghan ("O'Callaghan") appeared at the hearing and testified on his own behalf. Mr. Kurt Nelson ("Nelson"), Portland Parks and Recreation Park Ranger, appeared and testified on behalf of the City. The Hearings Officer, on his own motion, admits Exhibits 1 through and including 11 into the evidentiary record.

The Hearings Officer finds that Mr. O'Callaghan received the Notice of Exclusion from a City of Portland Park (Springwater) that is subject to this case on January 27, 2011 ("1/27 Exclusion") at approximately 10:00 a.m. (Exhibit 2). O'Callaghan received the 1/27 Exclusion for allegedly violating ORS 164.245 (Trespass). The underlying reason for O'Callaghan receiving the 1/27 Exclusion was that at the time of issuance of the 1/27 Exclusion he was in the Springwater Park in violation of a Notice of Exclusion from a City of Portland Park issued on January 26, 2011 ("1/26 Exclusion").

The Hearings Officer, during the hearing for the 1/27 Exclusion, took notice of Hearings Office Case # 3110031 (O'Callaghan appeal of 1/26 Exclusion). The Hearings Officer took note of Exhibit 4 in Case

#3110031 which indicates that O'Callaghan had submitted a written appeal of the 1/26 Exclusion and the Portland Police Bureau recorded the "stay" of the 1/26 Exclusion effective 8:04 a.m. on January 27, 2011.

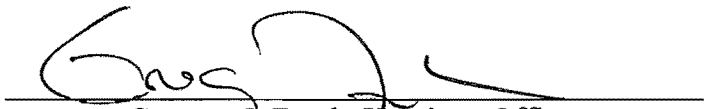
Nelson, on behalf of the City, conceded that the 1/27 Exclusion was issued at a time when the 1/26 Exclusion was "stayed" and therefore the 1/27 Exclusion was issued improperly.

The Hearings Officer finds that at the time the 1/27 Exclusion was issued (10:00 a.m. on January 27, 2011) the 1/26 Exclusion was not effective. Therefore, the Hearings Officer finds the 1/27 Exclusion is not valid.

#### ORDER AND DETERMINATION:

1. The Notice of Exclusion From City of Portland Park (Springwater) issued on January 27, 2011 (Police Bureau Case # 11-6826) is not valid and shall have no force and effect; the appeal of O'Callaghan is granted.
2. This order has been mailed to the parties on February 23, 2011.
3. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: February 23, 2011

  
Gregory J. Frank, Hearings Officer

GJF:rs

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Appeal form page 1a	Complaint Signer's Office,	Received
1a	1/27/11 letter	Complaint Signer's Office,	Received
2	Notice of Exclusion or Warning From City of Portland Park	Complaint Signer's Office,	Received
3	Appeal form page 2	Complaint Signer's Office,	Received
4	Special Report	Complaint Signer's Office,	Received
5	Appeal form page 2	Complaint Signer's Office,	Received
6	Appeal form page 1a	Complaint Signer's Office,	Received
6a	1/27/11 letter	Complaint Signer's Office,	Received
7	Notice of Exclusion or Warning From City of Portland Park	Complaint Signer's Office,	Received
8	Custody Report	Complaint Signer's Office,	Received
9	Notice of Exclusion or Warning From City of Portland Park	Complaint Signer's Office,	Received
10	Mailing List	Hearings Office	Received
11	Hearing Notice	Hearings Office	Received