



# CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

## Hearings Office

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## HEARINGS OFFICER'S ORDER

### APPEAL OF SHELLY ALCINA

CASE NO. 3110082

[Police Bureau Case No. 11-014487]

PARK: Waterfront Park

DATE OF HEARING: March 25, 2011

### APPEARANCES:

Appellant did not appear

Officer Chad Daul, for the City

Officer John Grable, for the City

HEARINGS OFFICER: Ms. Kimberly M. Graves

### FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Ms. Shelly Alcina did not appear on her own behalf at the hearing. Officer Chad Daul and Officer John Grable appeared on behalf of the City. The Hearings Officer makes this decision based upon the testimony of Officer Daul, and the exhibits admitted into the evidentiary record (Exhibits 1 through, and including, 8).

Officer Daul testified that he contacted Ms. Alcina on February 22, 2011 in Waterfront Park and participated in writing the exclusion notice. Officer Daul stated that there were three individuals he was dealing with simultaneously and he determined, after the fact, that the exclusion for Ms. Alcina should have been for 30 days, and not 180 days as indicated on the Notice of Exclusion. Officer Daul testified that he personally warned Ms. Alcina in case number 10-94745 for camping in a City of Portland park, but he was unaware of any other warnings or exclusions issued to Ms. Alcina.

The Hearings Officer finds that the preponderance of the evidence in the record is that it is more likely than not that Ms. Alcina was in violation of PCC 14A.50.020 for camping in Waterfront Park on

February 22, 2011. The Hearings Officers finds it is more likely than not that Ms. Alcina had received at least one prior warning related to camping in a City park. The Hearings Officer finds that the appropriate exclusion for Ms. Alcina would be for 30 days, and not 180 days as indicated on her Notice of Exclusion. The Hearings Officer finds that Ms. Alcina has a right to defend herself against a *properly* executed Notice of Exclusion, and failure to properly execute the Notice of Exclusion results in the exclusion being invalid.

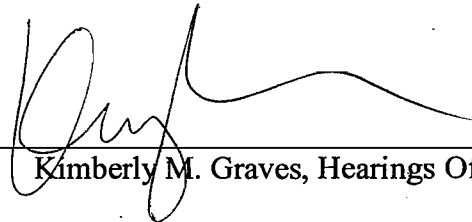
The Hearings Officer finds that the Notice of Exclusion in Ms. Alcina's case was not properly executed, as it indicated an incorrect duration. The Hearings Officer finds that the exclusion is invalid, and therefore Ms. Alcina's appeal is granted.

#### ORDER AND DETERMINATION:

1. The Exclusion (Exhibit 1a) from Waterfront Park issued to Shelly Ann Alcina on February 22, 2011 is invalid; Ms. Alcina's appeal is granted.
2. This order has been mailed to the parties on April 1, 2011, and will become final and effective on April 15, 2011.
3. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: April 1, 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 or Warning From City of Portland Park	Complaint Signer's Office,	Received
2	Appeal form page 2	Complaint Signer's Office,	Received
3	special Report	Complaint Signer's Office,	Received
4	Notice of Exclusion or Warning From City of Portland Park	Complaint Signer's Office,	Received
4a	Issuing Person's Sworn Statement/Affidavit	Complaint Signer's Office,	Received
5	Notice of Exclusion or Warning From City of Portland Park		
	- James Andrew Murphy	Complaint Signer's Office,	Received
5a	Issuing Person's Sworn Statement/Affidavit	Complaint Signer's Office,	Received
6	Notice of Exclusion or Warning From City of Portland Park		
	- Alysha Schuyler	Complaint Signer's Office,	Received
6a	Issuing Persons' Sworn Statement/Affidavit	Complaint Signer's Office,	Received
7	Mailing List	Hearings Office	Received
8	Hearing Notice	Hearings Office	Received