



CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

1900 SW 4th Avenue, Room 3100

Portland, OR 97201

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

web: www.portlandoregon.gov/auditor/hearings



HEARINGS OFFICER'S ORDER

APPEAL OF WILLIAM G. STREB, JR.

CASE NO. 3110428

[Police Bureau Case No. 11-53990]

PARK: Waterfront Park

DATE OF HEARING: November 3, 2011

APPEARANCES:

None

HEARINGS OFFICER: Ms. Kimberly M. Graves

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Mr. Streb did not appear at the hearing or testify on his own behalf. No one appeared on behalf of the City. The Hearings Officer admits Exhibits 1 through and including 28 into the evidentiary record on her own motion.

The Hearings Officer finds that Mr. Streb received the Notice of Exclusion ("Exclusion") from a City of Portland Park (Waterfront Park), which is the subject of this case, on September 29, 2011, at approximately 4:35 a.m. (Exhibit 3). The Exclusion lists Waterfront Park as the City Park from which Mr. Streb would be excluded for 30 days. Mr. Streb received the Exclusion on September 29, 2011, for allegedly violating ORS 164.245 Criminal Trespass in the 2nd Degree. Mr. Streb submitted a request for an appeal hearing on the day the Exclusion was issued (Exhibit 1).

ORS 164.245 provides that a person commits the crime of Criminal Trespass in the 2nd Degree if the person enters or remains unlawfully in a motor vehicle or in or upon premises. Portland City Code (PCC) 20.12.265A provides, "In addition to other remedies provided for violation of this Code, or of any of the laws of the State of Oregon, any Park Officer may exclude any person who violates any applicable provision of law in any Park from that park in accordance with the provisions of this section." PCC 20.12.265B defines "applicable provision of law" as including "any applicable criminal or traffic law of the State of Oregon." PCC 20.12.265C provides that "an exclusion issued under the provisions of this Section shall be for thirty (30) days."

The City submitted a number of exhibits related to the contact with Mr. Streb on September 29, 2011. Exhibit 3 is a copy of the Notice of Exclusion or Warning From City of Portland Park issued to Mr. Streb. The summary portion of the report reads, "Subject in Park during closure hours." Exhibit 9 is a Special Report written by Officer Billard in which the officer lists a number of individuals who were contacted together and issued Park Exclusions. Mr. Streb is included as the fourth name on the list. The second page of the Special Report indicates that while conducting a patrol of Waterfront Park during park closure hours, the officer contacted the named subjects and issued them park exclusions for trespassing in the park during closure hours.

Mr. Streb submitted a handwritten appeal form (Exhibit 1) in which he writes, "I am new to this area. The sidewalk was full outside mission. I was under the impresson (sic) from what I was told it was o.k under bridge. (Please) take in to consideration I was not in (grassy area or benches) I'll find a new place to sleep and will do my best not to violate city or in the future. Thank you."

The Hearings Officer finds that the evidence in the record is the documents admitted into the evidentiary record.

The Hearings Officer finds no material conflicts in the information of the parties and finds that the written documents accurately reflect the events leading up to the issuance of the Exclusion on September 29, 2011, to Mr. Streb. The Hearings Officer finds that Waterfront Park is a "park" as defined in PCC 20.04.010. The Hearings Officer finds, based on the submitted documents, that Mr. Streb was in Waterfront Park at a time when the park was closed. The Hearings Officer finds that it is more probable than not that being in a park when the park is closed to the public is a violation of ORS 164.245-Criminal Trespass in the 2nd Degree. The Hearings Officer finds that the preponderance of the evidence in the record is that it is more likely than not that on September 29, 2011, the crime of Criminal Trespass in the 2nd Degree under ORS 164.245 was committed by Mr. Streb in Waterfront Park. The Hearings Officer finds that under PCC 20.12.265A, exclusion is the appropriate remedy for a person who has committed a criminal act within a City of Portland park.

The Hearings Officer finds that the Exclusion issued to Mr. Streb on September 29, 2011, is valid and therefore Mr. Streb's appeal is denied.

The Exclusion was issued to Mr. Streb on September 29, 2011, and Mr. Streb filed his appeal the same day. The term of the Exclusion is for 30 days. The Hearings Officer finds that a stay of the Exclusion has been in effect since September 29, 2011. The Hearings Officer finds that the stay shall terminate immediately at which time the Exclusion term shall begin and run until 4:30 p.m. on December 3, 2011.

ORDER AND DETERMINATION:

The Exclusion issued to Mr. Streb on September 29, 2011, is valid and therefore Mr. Streb's appeal is denied.

The stay of the notice pending hearing shall terminate immediately, at which time, the Exclusion shall go into effect and continue until 4:30 p.m. on December 3, 2011.

This order has been mailed to the parties on November 4, 2011.

This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: November 4, 2011


Kimberly M. Graves, Hearings Officer

KMG:rs

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Appeal form page 1a	Complaint Signer's Office.	Received
2	Appeal form page 2	Complaint Signer's Office.	Received
3	Notice of Exclusion or Warning From City of Portland Park	Complaint Signer's Office.	Received
4	Special Report	Complaint Signer's Office.	Received
5	Custody Report by Officer Billard	Complaint Signer's Office.	Received
6	Oregon Uniform Citation and Complaint - Tae Yong Kim	Complaint Signer's Office.	Received
7	Custody Report by Officer Billard	Complaint Signer's Office.	Received
8	Oregon Uniform Citation and Complaint - Tommy Louis Ruelas	Complaint Signer's Office.	Received
9	Special Report by Officer Billard	Complaint Signer's Office.	Received
10	Notice of Exclusion or Warning From City of Portland Park - Tommy Ruelas	Complaint Signer's Office.	Received
11	Notice of Exclusion or Warning From City of Portland Park - Tae Yong Kim	Complaint Signer's Office.	Received
12	Notice of Exclusion or Warning From City of Portland Park - Rebekah Khadlejah Faust	Complaint Signer's Office.	Received
13	Notice of Exclusion or Warning From City of Portland Park - Michael Wayne Faust Jr.	Complaint Signer's Office.	Received
14	Notice of Exclusion or Warning From City of Portland Park - William George Streb Jr.	Complaint Signer's Office.	Received
15	Notice of Exclusion or Warning From City of Portland Park - Thomas M. Martz	Complaint Signer's Office.	Received
16	Notice of Exclusion or Warning From City of Portland Park - Kayla Kelley	Complaint Signer's Office.	Received
17	Notice of Exclusion or Warning From City of Portland Park - Ray Bowen	Complaint Signer's Office.	Received
18	Notice of Exclusion or Warning From City of Portland Park - Code R. McGilivray	Complaint Signer's Office.	Received
19	Notice of Exclusion or Warning From City of Portland Park - Shawna Rambo	Complaint Signer's Office.	Received
20	Notice of Exclusion or Warning From City of Portland Park - Phillip James Foster	Complaint Signer's Office.	Received
21	Notice of Exclusion or Warning From City of Portland Park - Buddy Allen Johnson	Complaint Signer's Office.	Received
22	Notice of Exclusion or Warning From City of Portland Park - Steven Michael Parr	Complaint Signer's Office.	Received
23	Notice of Exclusion or Warning From City of Portland Park - Michael Craig Heckman	Complaint Signer's Office.	Received
24	Notice of Exclusion or Warning From City of Portland Park - Michael William Faust	Complaint Signer's Office.	Received
25	Notice of Exclusion or Warning From City of Portland Park - Derek James Hart	Complaint Signer's Office.	Received
26	Notice of Exclusion or Warning From City of Portland Park - Clarence Fleharty	Complaint Signer's Office.	Received
27	Mailing List	Hearings Office	Received
28	Hearing Notice	Hearings Office	Received