

# CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

## Hearings Office

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## HEARINGS OFFICER'S ORDER

APPEAL OF MARGARET F. RYAN

CASE NO. 3110563

[Police Bureau Case No. 11-110028]

PARK: Oaks Bottom

DATE OF HEARING: January 17, 2012

### APPEARANCES:

Ms. Margaret Ryan, Appellant

No one appeared on behalf of the City

HEARINGS OFFICER: Ms. Kimberly M. Graves

### FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Ms. Margaret Ryan appeared on her own behalf at the hearing. No one appeared on behalf of the City of Portland Parks and Recreation ("Parks"). The Hearings Officer makes this decision based upon the testimony of Ms. Ryan and the exhibits admitted into the evidentiary record (Exhibits 1 through, and including, 10).

Kurt Nelson, Park Ranger Supervisor for Parks, mailed a letter (Exhibit 5), on behalf of Parks, to Ms. Ryan with an enclosed copy of a Notice of Exclusion From City of Portland Park (the "Exclusion") (Exhibit 8). The Exclusion states, in relevant part, that on December 15, 2011, a Parks technician observed Ms. Ryan in the Oaks Bottom Wildlife Refuge with her dogs off-leash. The Exclusion indicates that Ms. Ryan, on December 15, 2011, violated Portland City Code ("PCC") 20.12.140 [Animals] and 21.12.240 [Rules and Regulations, Directions of Park Officers to be Obeyed]. The Exclusion lists Oaks Bottom as the City Park from which Ms. Ryan would be excluded for 30 days. Ms. Ryan submitted a request for an appeal hearing and accompanying documentation (Exhibits 1, 3 and 4).

PCC 20.12.140 [Animals] states, in part, that “no person owning, in control of or responsible for any dog shall allow that dog to be in any Park if the dog is not held securely on a leash...” PCC 20.12.240 [Rules and Regulations, Directions of Park Officers to be Obeyed] states, in part, “no person shall ...refuse or fail to obey any reasonable direction of a Park Officer.”

The Exclusion was issued by Officer K D’Agrosa on December 15, 2011, and the narrative portion reads, “On December 15, 2011 at approximately 1120, while on patrol in Oaks Bottom Wildlife Refuge I saw Ryan with her dogs, a pair of black and white border collies, off leash. I explained the park rules and she said she understood. I asked for her information and she refused to provide any. I warned Ryan that her failure to cooperate would result in an exclusion from the park. Ryan still refused and walked away. I told Ryan she was excluded and that any return to the park within 30 days would be a criminal trespass. A check of our data bases provided Ryan’s information.”

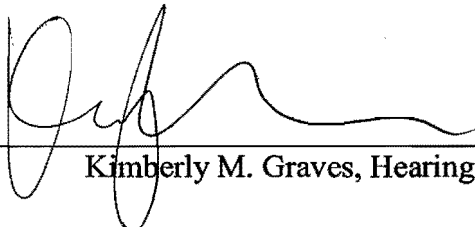
Ms. Ryan testified that on December 15, 2011, at 11:20 a.m., she was at work at her job in Vancouver, Washington. Ms. Ryan stated that she has received a warning in the past from Parks about having her dogs off-leash, and that she has not had her dogs off-leash since that time. Ms. Ryan submitted Exhibit 4, a letter from her employer, as evidence that she was at work at the time of the alleged violation on December 15, 2011. Ms. Ryan also testified that she contacted Parks about the exclusion and spoke with Ms. D’Agrosa. Ms. Ryan testified that she was told that the “system isn’t perfect” and that her information “fit the profile” that was put into the system. Ms. Ryan stated that her information was likely in the system due to the previous warning. Ms. Ryan testified that Ms. D’Agrosa told her that she could ignore the exclusion.

Parks has the burden of persuasion in this case; it must show, by a preponderance of the evidence, that the Exclusion was validly issued to Ms. Ryan on December 15, 2011. PCC 20.12.265A provides that a Park officer may exclude any person who violates any applicable provision of law in any Park. . .” The Hearings Officer finds the testimony of Ms. Ryan, and Exhibit 4, to be credible, and finds that Ms. Ryan was at work in Vancouver, Washington at the time when the Exclusion was issued on December 15, 2011. The Hearings Officer finds that Parks has failed to meet its burden of persuasion with regards to the Exclusion issued to Ms. Ryan on December 15, 2011, because Parks has failed to prove by a preponderance of the evidence that Ms. Ryan was the person contacted by Officer D’Agrosa in the park. The Hearings Officer finds the Exclusion issued to Ms. Ryan on December 15, 2011, is not valid.

#### ORDER AND DETERMINATION:

1. The Notice of Exclusion or Warning From City of Portland Park issued to Margaret Ryan on December 15, 2011, (Exhibit 8) is not valid; the appellant prevails in this appeal.
2. This order has been mailed to the parties on January 20, 2012.
3. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: January 20, 2012

  
Kimberly M. Graves, Hearings Officer

KMG:jeg/rs

Enclosure

<b>Exhibit #</b>	<b>Description</b>	<b>Submitted by</b>	<b>Disposition</b>
1	Appeal Form page 1a	Complaint Signer's Office,	Received
2	Notice of Exclusion or Warning From City of Portland Park	Complaint Signer's Office,	Received
3	12/19/11 Letter from Margaret F. Ryan	Complaint Signer's Office,	Received
4	12/19/11 Letter from Aaron I. Evans, Bonneville Power Administration	Complaint Signer's Office,	Received
5	12/15/11 Letter from Kurt Nelson to Margaret Ryan	Complaint Signer's Office,	Received
6	Appeal Form page 2	Complaint Signer's Office,	Received
7	Special Report	Complaint Signer's Office,	Received
8	Notice of Warning From City of Portland Park	Complaint Signer's Office,	Received
9	Mailing List	Hearings Office	Received
10	Notice of Hearing	Hearings Office	Received