



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 JOHN RICHARDS

CASE NO. 3120017

[Police Bureau Case No. Unknown]

PARK: Buckman Pool Pathway

DATE OF HEARING: February 9, 2012

APPEARANCES:

Mr. John Richards, Appellant

No one appeared on behalf of City

HEARINGS OFFICER: Ms. Kimberly M. Graves

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Mr. Richards appeared at the hearing and testified on his own behalf. No one appeared on behalf of the City. The Hearings Officer admits Exhibits 1 through and including 5 into the evidentiary record.

The Hearings Officer finds that Mr. Richards received the Notice of Exclusion from a City of Portland Park, which is the subject of this case, on January 11, 2012, at approximately 3:30 p.m. (Exhibit 3). The Exclusion does not clearly indicate which Park Mr. Richards would be excluded from for 30 days. Mr. Richards received the Exclusion on January 11, 2012, for allegedly harassing a Portland Parks and Recreation staff member. Mr. Currie submitted a request for an appeal hearing on January 13, 2012, (Exhibit 1).

Harassment under ORS 166.065 provides that a person commits the crime of harassment if the person intentionally harasses or annoys another person by subjecting such other person to offensive physical contact.

No one appeared on behalf of the City, and the City did not submit any information related to the Exclusion issued to Mr. Richards on January 11, 2012.

Mr. Richards submitted an appeal form (Exhibit 1), and a type-written letter (Exhibit 2) in which he writes, "I do not feel my behavior constituted harassment under Oregon state law or local laws. . . The conversation with the lifeguard occurred while she was walking home for lunch, and not on duty, and in a field at Buckman School and not on the cement pathway adjacent to the pool as she claimed, therefore exclusion from the pool would not apply." Mr. Richards also indicated in Exhibit 2 that he believes that the Exclusion notice was not filled out properly and that it is therefore invalid. Mr. Richards appeared at the hearing and reiterated his belief that the Exclusion document is defective. Mr. Richards did not provide any testimony related to the facts which led to the issuance of the Exclusion.

The Hearings Officer finds that the evidence in the record is the testimony of Mr. Richards and the documents admitted into the evidentiary record.

The Hearings Officer notes that the burden lies with the City to prove that the Exclusion was validly issued. The City has submitted no evidence into the record with regards to the Exclusion issued to Mr. Richards on January 11, 2012. The Hearings Officer finds that the City has failed to meet its burden with regards to the Exclusion issued to Mr. Richards on January 11, 2012.

The Hearings Officer finds that the Exclusion issued to Mr. Richards on January 11, 2012, is not valid and therefore Mr. Richards's appeal is granted.

ORDER AND DETERMINATION:

The Hearings Officer finds that the Exclusion issued to Mr. Richards on January 11, 2012, is not valid and therefore Mr. Richards's appeal is granted.

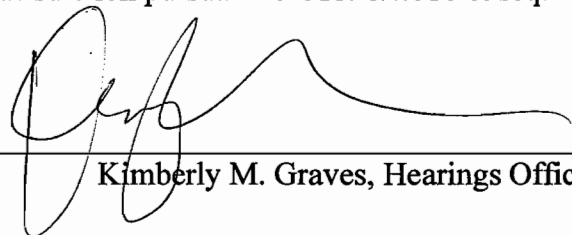
The Exclusion issued January 11, 2012, shall not become effective.

This order has been mailed to the parties on February 10, 2012.

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

Dated: January 10, 2012

KMG: jeg



Kimberly M. Graves, Hearings Officer

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Appeal Form Page 1	Richards, John	Received
2	1/13/12 Letter	Richards, John	Received
3	Notice of Exclusion From City of Portland Parks or Properties	Richards, John	Received
4	Mailing List	Hearings Office	Received
5	Notice of Hearing	Hearings Office	Received