



CITY OF  
**PORTLAND, OREGON**  
**OFFICE OF THE CITY AUDITOR**  
Hearings Office

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**HEARINGS OFFICER'S ORDER**

**APPEAL OF DARIUSZ A. SWIDEREK**

CASE NO. 3100029  
[Police Bureau Case No., Unknown]

PARK: Forest Park

DATE OF HEARING: February 16, 2010

**APPEARANCES:**

Dariusz A. Swiderek, Appellant

HEARINGS OFFICER: Mr. Gregory J. Frank

**FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

Mr. Swiderek, Appellant, appeared at the hearing and testified on his own behalf. Appellant submitted a document (Exhibit 5) at the hearing. No person appeared at the hearing on behalf of the City. The Hearings Officer makes this decision based upon the testimony of Appellant and the documents admitted into the evidentiary record (Exhibits 1 through and including 5).

Appellant stated that he was in Forest Park, on January 6, 2010, with his dog and other dogs owned by friends. Appellant stated that, for medical reasons, he let the dogs off of their leashes while in Forest Park. Appellant stated that because of medical problems he has difficulty in holding a dog leash for long periods of time.

Appellant stated that while he was in Forest Park on January 6, 2010 he was approached by two Park Rangers who asked him for his identification and told him to put all of the dogs on their leashes. Appellant stated that he complied with this request. Appellant stated that he was then handed a Notice of Exclusion from Forest Park.

Appellant argued that he should be given the right to walk dogs in Forest Park without the dogs being leashed because of his medical issues. Appellant submitted a letter from a physician confirming that Appellant does have medical problems.

The only document in the record submitted by the City is Exhibit 2; copy of Notice of Exclusion or Warning from City of Portland Park. Exhibit 2 indicates that Appellant was excluded from Forest Park for violating Portland City Code ("PCC") 20.12.140 and 20.12.240. PCC 20.12.140 relates to the requirement that dogs be on leashes while in City of Portland Parks. PCC 20.12.240 relates to a person failing to follow the lawful directive of a Park Ranger.

The evidence in the record is that on January 6, 2010 Appellant was in Forest Park with dogs off leash; a violation of PCC 20.12.140. There is no evidence in the record to support a finding that Appellant failed to follow a lawful order of a Park Ranger.

PCC 20.12.265 requires that a warning be given prior to certain enumerated violations, prior to the issuance of a Notice of Exclusion. There is no evidence in the record describing a warning given to Appellant for the violation of PCC 20.12.140 (dog off leash). The persuasive evidence in the record is that Appellant did comply with all directives given by the Park Rangers. The evidence in the record is that the Park Ranger issuing the Notice of Exclusion to Appellant on January 6, 2010 did not comply with PCC 20.12.265.

The Hearings Officer finds, based upon the evidence in the record, that the Notice of Exclusion issued to Mr. Dariusz A. Swiderek on January 6, 2010 is not valid

#### ORDER AND DETERMINATION:

1. The Notice of Exclusion issued to Mr. Dariusz A. Swiderek on January 6, 2010 is not valid and therefore, the Notice of Exclusion shall have no force and effect; Appellant prevails in this appeal.
2. This order has been mailed to the parties on February 17, 2010.
3. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: February 17, 2010



Gregory J. Frank, Hearings Officer

GJF:rs/cb

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Appeal form page 1a	Complaint Signer's Office,	Received
1a	1/14/10 appeal letter from Dariusz a. Swiderek	Complaint Signer's Office,	Received
2	Notice of Exclusion or Warning From City of Portland Park	Complaint Signer's Office,	Received
3	Mailing List	Hearings Office	Received
4	Hearing Notice	Hearings Office	Received
5	2/12/10 letter from James Thayer, MD	Swiderek, Dariusz A.	Received