



CITY OF PORTLAND

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HEARINGS OFFICER'S ORDER

APPEAL OF DAVID PARSONS

CASE NO. 3110049

[Police Bureau Case No. 11-10709]

PARK: Waterfront - Riverplace

DATES OF HEARINGS: February 22, 2011 and March 10, 2011

APPEARANCES:

Mr. David Parsons, Appellant

Mr. Kurt Nelson, for the City

HEARINGS OFFICER: Mr. Gregory J. Frank

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

On February 22, 2011 ("1st Hearing") Mr. Parsons ("Parsons") appeared at the hearing. Mr. Kurt Nelson ("Nelson") appeared on behalf of the City of Portland Parks and Recreation Bureau ("Parks"). In reviewing Parsons' hearing rights, Parsons noted that he had initiated contact with a social service agency who was going to place him in contact with a public interest law firm. The Hearings Officer continued the hearing until March 10, 2011 at 1:45 p.m. (2nd Hearing). The Hearings Officer delayed the start of the 2nd Hearing for approximately 10 minutes waiting for Parsons to appear. Parsons and Nelson appeared, and Nelson testified, at the 2nd Hearing.

The Hearings Officer inquired as to the reason Parsons failed to be accompanied by an attorney. Parsons stated that the public interest law firm he had contacted did not have staff available for an estimated six weeks. Parsons did not provide the Hearings Officer any proof that the public interest law firm would accept his case even if the Hearings Officer continued the hearing for six weeks. Parsons provided no written acknowledgement from any lawyer or law firm that (1) he had contacted the firm and/or (2) the firm was committed to taking his case. The Hearings Officer found that delaying the hearing of Parsons' case for an additional six weeks, without a commitment from a lawyer or law firm that they had been contacted and/or committed to taking Parsons' case, was not reasonable or appropriate. The Hearings Officer denied Parsons' request for an additional continuance. The 2nd Hearing was held on March 10, 2010.

The Hearings Officer makes this decision based upon the testimony of Nelson and the documents admitted into the evidentiary record (Exhibits 1 through and including 7).

Nelson testified that the "North breakwater" portion of the Riverplace Marina is included within the description of Waterfront Park; a City of Portland park. Nelson noted that Portland City Code ("PCC") section 19.16.060 D states "It is unlawful to moor a watercraft at a municipal boat landing for a period exceeding 24 hours or while the parks is closed, without prior written permission of the Director."

Nelson testified that a boat, identified as OR 267RN (the "Subject Boat") had been moored at the North breakwater portion of the Riverplace Marina, on or about August 14, 2010, without a permit and was issued a warning (Exhibit 5). Parsons is the owner of the Subject Boat. Nelson stated that the Subject Boat was moored at the North breakwater of the Riverplace Marina for an excess of one week and on February 7, 2011, a warning was issued (Exhibit 4). Nelson stated that on February 8, 2011, the Subject Boat remained moored at the Riverplace Marina, without a permit, and a Notice of Exclusion From City of Portland Park (the "Exclusion") was issued to Parsons (Exhibit 1a).

Parsons did not testify at the 2nd hearing.

Nelson, in his final argument, noted that Parsons had received two prior warnings but still failed to follow Parks rules applicable to mooring boats at a Portland municipal dock (PCC 19.16.060). Nelson stated that he had a number of conversations with Parsons informing Parsons of the terms of PCC 19.16.060.

Parsons, in his written request for an appeal hearing (Exhibit 1), stated that the reason he disagreed with the Exclusion order was that "feel unfair & want to appeal this." Parsons, in his final argument, stated that he fully intended to leave after receiving the warning on February 7, 2011 (Exhibit 4). Parsons noted that he was working on his boat at the time he received the Exclusion. Parsons noted that he was aware of other boats being moored at the North breakwater dock at the Riverplace Marina for longer than 24 hours. Parsons indicated that during the summer of 2010 he had paid \$5.00 per day for moorage at the North breakwater dock at the Riverplace Marina.

The Hearings Officer finds that the evidence in the record is the testimony of Nelson and the documents admitted into the evidentiary record. Parsons written submission (Exhibit 1) simply states that he felt that the issuance of the Exclusion was "unfair." Parsons provided no additional evidence into the evidentiary record.

The Hearings Officer finds, as there is no conflicting or competing evidence, that the testimony of Nelson is credible and that Nelson's testimony accurately reflects the events leading up to the issuance of the Exclusion. The Hearings Officer finds that the preponderance of the evidence in the record is that it is more likely than not that Parsons moored the Subject Boat at the North breakwater dock at the Riverplace Marina for an excess of 24 hours without having first received a permit from the Park's Director. The Hearings Officer finds it is more likely than not that Parsons had received at least one prior warning (see Exhibits 4 and 5) related to mooring the Subject Boat at the North breakwater dock at the Riverplace Marina. The Hearings Officer finds that it is more likely than not that the Subject Boat was moored, on or about February 8, 2011, in violation of PCC 19.16.060 D.

The Hearings Officer finds that the Exclusion is valid and therefore Parsons' appeal is denied.

The Exclusion was issued to Parsons on February 8, 2011 and Parsons filed his appeal on February 8, 2011. The term of the Exclusion is 30 days. The Hearings Officer finds that a stay of the Exclusion has been in effect since February 8, 2011. The Hearings Officer finds that the stay shall continue in effect until March 30, 2011, at which time the Exclusion term shall begin and run until 4:30 p.m. on April 27, 2011.

ORDER AND DETERMINATION:

1. The Exclusion (Exhibit 1a) from Waterfront – Riverplace Park issued to David L. Parsons on February 8, 2011 is valid; Parsons' appeal is denied.
2. The stay of the Exclusion shall remain in effect until March 30, 2011, the effective date of this order. The Exclusion from Waterfront - Riverplace Park shall commence on March 30, 2011 and end at 4:30 p.m. on April 27, 2011.
3. This order has been mailed to the parties on March 15, 2011, and will become final and effective on March 30, 2011.
4. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: March 15, 2011



Gregory J. Frank, Hearings Officer

GJF:rs

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
5	Notice of Exclusion or Warning From City of Portland Park	Complaint Signer's Office,	Received
6	Mailing List	Hearings Office	Received
7	Hearing Notice	Hearings Office	Received