

# CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

## Hearings Office

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## HEARINGS OFFICER'S ORDER

### APPEAL OF IVAN ANDREASON

CASE NO. 3110339

DATE OF HEARING: September 13, 2011

### APPEARANCES:

Excluded party did not appear

Park Ranger Nathan Hepp, on behalf of the City

HEARINGS OFFICER: Mr. Gregory J. Frank

### FINDINGS OF FACT AND CONCLUSIONS OF LAW:

A Notice of Hearing was mailed to the address provided by Mr. Andreason (Exhibit 12). A Notice of Hearing, regarding a hearing date reschedule, was mailed to the address provided by Mr. Andreason (Exhibit 14). Both of the mailed Hearing Notices provided the date, time, and place of the scheduled hearings as well as instructions on how Mr. Andreason could request a continuance or set over. Neither the Notice of Hearing (Exhibit 12) nor the reschedule Hearings Notice (Exhibit 14) was returned to the Hearings Office by the United States Postal service as undeliverable. Mr. Andreason did not contact the Hearings Office to request a continuance or set over and Mr. Andreason did not appear at the rescheduled hearing on September 13, 2011. City of Portland Park Ranger Hepp ("Ranger Hepp") appeared at the hearing and testified on behalf of the City. The Hearings Officer makes this decision based upon the testimony of Ranger Hepp and the documents admitted into the evidentiary record (Exhibits 1 through and including 14).

Mr. Andreason received a Notice of Exclusion From City of Portland Park (South Waterfront Park) on July 31, 2011 (Exhibits 2 and 6). Mr. Andreason received the Notice of Exclusion (Exhibits 2 and 6) for allegedly violating Portland City Code ("PCC") 19.16.060 (municipal boat landing) and PCC 20.12.020 (selling services from public park without a permit). A person violates PCC 19.16.060 if the person moors or berths a boat at a municipal boat landing, without permission by the City Parks and Recreation bureau, other than for recreational purposes. A person violates PCC 20.12.020 if the person sells or offers any article or service within a City of Portland Park.

Mr. Andreason stated, in Exhibit 1, that, "harrassed by park rangers, not owner of boat. Not selling items. Singled out/harrassed by park rangers." Mr. Andreason provided no additional evidence, in the record, for the Hearings Officer to consider.

Ranger Hepp testified that on July 31, 2011 he and a partner Park Ranger (Ranger Schulze), while at Powers Marine Park, observed Mr. Andreason in a sailboat moored to a "dock tied to City Park waterfront property." Ranger Hepp stated that he was aware of previous interactions with Mr. Andreason, including a warning issued on July 27, 2011, and an Exclusion from Powers Marine Park on July 28, 2011. Ranger Hepp stated that he knew this July 28, 2011 Exclusion to have been issued on account of a dock (where the sailboat upon which Mr. Andreason was observed) being improperly attached to a tree in Powers Marine Park. Ranger Hepp stated that the dock remained improperly attached to the tree. Ranger Hepp stated that he contacted Multnomah County River Patrol to have Mr. Andreason arrested for trespass, as Mr. Andreason was present in Powers Marine Park during an active park exclusion.

Ranger Hepp testified that he observed Mr. Andreason sail away from the dock in a northerly direction towards downtown Portland. Ranger Hepp drove to South Waterfront Park where he observed Mr. Andreason's sailboat being moored. Ranger Hepp stated that he walked to the location where Mr. Andreason's sailboat was docked and talked to persons seen boarding Mr. Andreason's sailboat. Ranger Hepp stated that he and his partner interviewed persons boarding Mr. Andreason's sailboat and was told that the persons had paid for a sailboat excursion. The passengers, according to Ranger Hepp, stated that Mr. Andreason was to act as their "tour guide." Ranger Hepp stated that Mr. Andreason admitted that he was docked at the City docks at Waterfront Park to pick up paying customers for a sailing excursion.

The Hearings Officer finds the testimony of Ranger Hepp to be credible. The Hearings Officer finds the written statements by Mr. Andreason (Exhibit 1) not to be relevant or credible.

The Hearings Officer finds that Mr. Andreason did dock a sailboat, whether owned by Mr. Andreason or someone else, at the public docks at South Waterfront Park and did attempt to board paying customers for a sailboat excursion. The Hearings Officer finds it is more likely than not, by a preponderance of the evidence, that such activity violates both PCC 19.16.060 and PCC 20.12.020. The Hearings Officer finds that the Notice of Exclusion issued to Mr. Ivan A. Andreason on July 31, 2011, from South Waterfront Park, is valid.

The Hearings Officer finds that the Notice of Exclusion issued to Mr. Andreason, from South Waterfront Park indicates the exclusion term is 180 days. Pursuant to PCC 20.12.265 B. the term of a Park Exclusion shall be 30 days unless the person has received, within a two year period, one or more prior Notice of Exclusion(s) from a City of Portland Park. If a person received one prior Notice of Exclusion from a City of Portland Park, within two years, the exclusion term is ninety days and if the person received two or more Notice of Exclusions, within two years, the exclusion term is one hundred eighty days. The Hearings Officer finds that Mr. Andreason received a Notice of Exclusion from a City of Portland Park on February 10, 2011 and another Notice of Exclusion from a City of Portland Park on July 28, 2011. The Hearings Officer finds that Mr. Andreason received two prior exclusions from City of Portland Parks within the last two years. The Hearings Officer finds the appropriate term of this

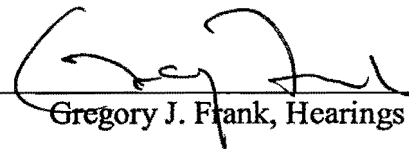
Notice of Exclusion (Exhibits 2 and 6) is 180 days. The Hearings Officer finds that Mr. Andreason filed his appeal on August 2, 2011 (3 days after the Notice of Exclusion was issued). Therefore, the Hearings Officer finds the remaining term of the Notice of Exclusion to be 177 days.

#### ORDER AND DETERMINATION:

1. The Notice of Exclusion (Exhibits 2 and 6) is valid; Mr. Andreason's appeal is denied.
2. The stay of the notice pending hearing is terminated and the exclusion term shall begin on the date of this Order and run until 5:00 p.m. on March 5, 2012.
3. The effective date of this Order shall be September 14, 2011.
4. This Order has been mailed to the parties on September 14, 2011.
5. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: September 14, 2011

GJF:rs/jeg

  
 Gregory J. Frank, Hearings Officer

Enclosure

Exhibit #	Description	Submitted by	Disposition
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	Appeal form page 2	Complaint Signer's Office,	Received
4	Special Report	Complaint Signer's Office,	Received
5	Note	Complaint Signer's Office,	Received
6	Notice of Exclusion or Warning From City of Portland Park	Complaint Signer's Office,	Received
7	Notice of Exclusion or Warning From City of Portland Park - George W. Eastman	Complaint Signer's Office,	Received
8	Park Rangers Special Report	Complaint Signer's Office,	Received
9	Notice of Exclusion or Warning From City of Portland Park - 11-65095	Complaint Signer's Office,	Received
10	Notice of Exclusion or Warning From City of Portland Park - 11-65082	Complaint Signer's Office,	Received
11	Mailing List	Hearings Office	Received
12	Hearing Notice	Hearings Office	Received
13	Request to reschedule	Chose, Brenton	Received
14	Hearing Notice	Hearings Office	Received