

CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF DAVIN CURRIE

CASE NO. 3110464

[Police Bureau Case No. Unknown]

PARK: Waterfront Park

DATE OF HEARING: November 1, 2011

APPEARANCES:

Mr. Davin Currie, Appellant

Officer Jacob Jensen, on behalf of the City

HEARINGS OFFICER: Ms. Kimberly M. Graves

Mr. Currie appeared at the hearing and testified on his own behalf. Officer Jacob Jensen appeared and testified on behalf of the City. The Hearings Officer admits Exhibits 1 through and including 11 into the evidentiary record.

The Hearings Officer finds that Mr. Currie received the Notice of Exclusion from a City of Portland Park (Waterfront Park), which is the subject of this case, on October 5, 2011 at approximately 3:45 p.m. (Exhibit 8). The Exclusion lists Waterfront Park/Hawthorne Bridge as the City Park from which Mr. Currie would be excluded for 30 days. Mr. Currie received the Exclusion on October 5, 2011 for allegedly violating ORS 164.043 Theft in the 3rd Degree. Mr. Currie submitted a request for an appeal hearing on the day the Exclusion was issued (Exhibit 1).

ORS 164.043 provides that a person commits the crime of Theft in the 3rd Degree if the person, by means other than extortion, commits theft, as defined in ORS 164.015, and the total value amount of the theft is less than \$100. ORS 164.015 indicates that "Theft" occurs when "with intent to deprive another of property or to appropriate property to the person . . . the person (1) Takes, appropriates, obtains or withholds such property from an owner thereof . . ." ORS 164.005 defines "Property" as "any article, substance or thing of value, . . ."

Officer Jensen appeared at the hearing and testified that on October 5, 2011, he was patrolling Waterfront Park on a bicycle. Officer Jensen testified that near the Hawthorne Bridge he observed a male subject, later identified as Mr. Currie, seated on the ground near the public bathrooms. Officer Jensen stated that Mr. Currie had his cellular phone plugged into an outlet which is located on the North side of the bathroom building. Officer Jensen indicated that the outlet is owned and maintained by the City of Portland, and that use of the outlet is available for a fee for individuals holding scheduled/permitted activities in the park. Officer Jensen stated that the outlet was previously protected by a locking cover, but that the cover had been vandalized and no longer protects the outlet. Officer Jensen testified that the center of the cover had been broken out, and it was clear from looking at the cover that it had been vandalized.

Mr. Currie submitted a handwritten appeal form (Exhibit 1) in which he writes, "There was no sign saying I couldn't charge my phone by the waterfront park outlet, and I had previously charged my phone with a different park's outlet." Mr. Currie appeared at the hearing and stated that he was not concerned with the Park Exclusion, but was instead concerned that he may have a felony or misdemeanor charge on his record. Mr. Currie stated that on October 5, 2011, he was homeless and had no where else to charge his cell phone. He did not dispute the validity of the Exclusion.

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

The Hearings Officer finds no material conflicts in the testimony of the parties, and finds the testimony of the parties to be credible. The Hearings Officer finds that the testimony accurately reflects the events leading up to the issuance of the Exclusion on October 5, 2011. The Hearings Officer finds that Waterfront Park is a "park" as defined in PCC 20.04.010. The Hearings Officer finds the outlet located within the park and attached to the bathroom building belongs to the City of Portland, and that it is more probable than not that any unauthorized use of such outlet constitutes a violation of ORS 164.043-Theft in the 3rd Degree. The Hearings Officer finds that the preponderance of the evidence in the record is that it is more likely than not that on October 5, 2011, the crime of Theft in the 3rd Degree under ORS 164.043 was committed by Mr. Currie.

The Hearings Officer finds that the Exclusion issued to Mr. Currie on October 5, 2011 is valid and therefore Mr. Currie's appeal is denied.

The Exclusion was issued to Mr. Currie on October 5, 2011 and Mr. Currie filed his appeal the same day. The term of the Exclusion is for 30 days. The Hearings Officer finds that a stay of the Exclusion has been in effect since October 5, 2011. The Hearings Officer finds that the stay shall terminate immediately at which time the Exclusion term shall begin and run until 4:30 p.m. on November 30, 2011.

ORDER AND DETERMINATION:

The Hearings Officer finds that the Exclusion issued to Mr. Currie on October 5, 2011 is valid and therefore Mr. Currie's appeal is denied.

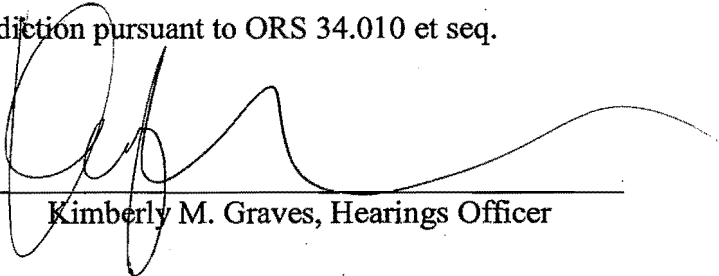
The stay of the notice pending hearing shall terminate immediately, at which time, the Exclusion shall go into effect and continue until November 30, 2011.

This order has been mailed to the parties on November 3, 2011.

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

Dated: November 3, 2011

KMG:rs



 Kimberly M. Graves, 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 | Mailing List | Hearings Office | Received |
| 4 | Hearing Notice | Hearings Office | Received |
| 5 | Note | Complaint Signer's Office, | Received |
| 6 | Appeal form page 2 | Complaint Signer's Office, | Received |
| 7 | Appeal form page 1a | Complaint Signer's Office, | Received |
| 8 | Notice of Exclusion or Warning From City of Portland Park | Complaint Signer's Office, | Received |
| 9 | Special Report | Complaint Signer's Office, | Received |
| 10 | Notice of Exclusion or Warning From City of Portland Park | Complaint Signer's Office, | Received |
| 11 | Notice of Exclusion or Warning From City of Portland Park - Timothy A. Soldani | Complaint Signer's Office, | Received |