



CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF JONATHON LEIGH MILLER, AKA JOHN LEE MILLER

CASE NO. 3110444

[Police Bureau Case No. 11-84390]

PARK: Waterfront Park

DATE OF HEARING: October 20, 2011

APPEARANCES:

Officer Jennifer Thompson, for the City

Appellant did not appear

HEARINGS OFFICER: Mr. Gregory J. Frank

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

A Notice of Hearing was sent to Mr. Miller on October 12, 2011 to the address provided by Mr. Miller in his request for an appeal hearing (Exhibit 1). The Notice of Hearing set forth the date/time/place of Mr. Miller's appeal hearing; October 20, 2011 at 2:45 p.m. in Room 3000, 1900 SW Fourth Avenue, Portland, Oregon. Mr. Miller did not contact the Hearings Office prior to his hearing and did not appear at the hearing. Portland Police Officer Thompson appeared at the hearing and testified on behalf of the City. The Hearings Officer makes this decision based upon the testimony of Police Officer Thompson and the documents admitted into the evidentiary record (Exhibits 1 through and including 39).

Mr. Miller was issued a Notice of Exclusion From City of Portland Park (the "Exclusion") on September 29, 2011 for allegedly violating ORS 164.245 (Criminal trespass in the second degree). A person violates ORS 164.245 if the person enters or remains unlawfully in or upon premises.

Mr. Miller, in his written request for an appeal hearing (Exhibit 1) stated, "I am disagreeing with the 'Park Exclusion' because I have been told that sleeping underneath the Hawthorne Bridge was not considered apart of Waterfront Park." Mr. Miller provided no additional evidence or argument beyond his statement in Exhibit 1.

Officer Thompson testified that on September 29, 2011 at approximately 4:50 a.m., she and two other Portland Police Officers were conducting a patrol of Waterfront Park. Officer Thompson stated that at the time of the patrol, the Waterfront Park was closed to all except those walking through the park. Officer Thompson stated that Mr. Miller was observed sleeping within Waterfront Park in the vicinity of the Hawthorne Bridge.

The Hearings Officer finds the Mr. Miller's written statement (Exhibit 1) that he was sleeping under the Hawthorne Bridge to be credible. The Hearings Officer finds Mr. Miller's assertion that the location where he was sleeping is not part of Waterfront Park to be supported only by hearsay evidence. The Hearings Officer finds Mr. Miller's statement that "he was told" that the area under the Hawthorne Bridge is not within Waterfront Park lacks any supportive evidence. The Hearings Officer finds Mr. Miller did not identify "who" told him that such area was not in Waterfront Park or "when" he was told that such area was not in Waterfront Park. The Hearings Officer finds Mr. Miller simply did not provide an adequate support for his statement.

The Hearings Officer finds that the testimony of Officer Thompson to be credible. The Hearings Officer finds that Mr. Miller was, on September 29, 2011 at approximately 4:50 a.m., sleeping under the Hawthorne Bridge. The Hearings Officer finds the testimony of Officer Thompson that the area under the Hawthorne Bridge is within Waterfront Park to be, in this case, persuasive. The Hearings Officer finds that a part of Officer Thompson's duties as a Portland Police Officer, patrolling Waterfront Park, is to be knowledgeable of the boundaries of Waterfront Park. The Hearings Officer finds that the location where Mr. Miller was sleeping at approximately 4:50 a.m. on September 29, 2011 is within Waterfront Park. The Hearings Officer finds that sleeping in Waterfront Park at approximately 4:50 a.m. is remaining on a premises unlawfully; therefore, a violation of ORS 164.245.

The Hearings Officer finds that the Notice of Exclusion From City of Portland Park (Waterfront Park) issued to Mr. John Lee Miller (AKA Jonathon Leigh Miller) on September 29, 2011 is valid. The Hearings Officer denies Mr. Miller's appeal.

Mr. Miller filed his request for an appeal hearing on September 29, 2011. As of September 29, 2011, Mr. Miller's exclusion has been stayed. The Hearings Officer finds the term of Mr. Miller's exclusion is 30 days and shall begin on the effective date of this Order.

ORDER AND DETERMINATION:

1. The Notice of Exclusion From City of Portland Park (Waterfront Park) issued to Mr. John Lee Miller (aka Jonathon Leigh Miller) on September 29, 2011 is valid; Mr. Miller's appeal is denied.
2. The term Mr. Miller's exclusion shall run from October 29, 2011 and end at 4:30 p.m. on November 27, 2011.
3. This order has been mailed to the parties on October 21, 2011 and shall become effective on October 29, 2011.

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

Dated: October 21, 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 - David Welch	Complaint Signer's Office,	Received
5	Notice of Exclusion or Warning From City of Portland Park - Delray Johnson-Penny	Complaint Signer's Office,	Received
6	Notice of Exclusion or Warning From City of Portland Park - Collin Arthur	Complaint Signer's Office,	Received
7	Notice of Exclusion or Warning From City of Portland Park - Benjamin Hodgson	Complaint Signer's Office,	Received
8	Notice of Exclusion or Warning From City of Portland Park - Mike Drew	Complaint Signer's Office,	Received
9	Notice of Exclusion or Warning From City of Portland Park - Taunia Lanham	Complaint Signer's Office,	Received
10	Notice of Exclusion or Warning From City of Portland Park - Jessica Diane Beer	Complaint Signer's Office,	Received
11	Notice of Exclusion or Warning From City of Portland Park - Thomas Smith	Complaint Signer's Office,	Received
12	Notice of Exclusion or Warning From City of Portland Park - James McNeese	Complaint Signer's Office,	Received
13	Notice of Exclusion or Warning From City of Portland Park - Angela Borouicka	Complaint Signer's Office,	Received
14	Notice of Exclusion or Warning From City of Portland Park - Lynn DeJan	Complaint Signer's Office,	Received
15	Notice of Exclusion or Warning From City of Portland Park - James Howard	Complaint Signer's Office,	Received
16	Notice of Exclusion or Warning From City of Portland Park - Steven A. Slane	Complaint Signer's Office,	Received
17	Notice of Exclusion or Warning From City of Portland Park - Kory J. Phipps	Complaint Signer's Office,	Received
18	Notice of Exclusion or Warning From City of Portland Park - Tiffany Ann Oliver	Complaint Signer's Office,	Received
19	Notice of Exclusion or Warning From City of Portland Park - John Lee Miller	Complaint Signer's Office,	Received
20	Notice of Exclusion or Warning From City of Portland Park - Jamie J. Hartenhoff	Complaint Signer's Office,	Received
21	Notice of Exclusion or Warning From City of Portland Park - David Langley	Complaint Signer's Office,	Received
22	Notice of Exclusion or Warning From City of Portland Park		

	- Walter O'Connor	Complaint Signer's Office,	Received
23	Notice of Exclusion or Warning From City of Portland Park		
	- Rolando Garcia	Complaint Signer's Office,	Received
24	Notice of Exclusion or Warning From City of Portland Park		
	- Phil J. Martell	Complaint Signer's Office,	Received
25	Notice of Exclusion or Warning From City of Portland Park		
	- Oliver Henry Hargrove	Complaint Signer's Office,	Received
26	Notice of Exclusion or Warning From City of Portland Park		
	- Natividad J. Galaviz	Complaint Signer's Office,	Received
27	Notice of Exclusion or Warning From City of Portland Park		
	- Gabriela Novak	Complaint Signer's Office,	Received
28	Notice of Exclusion or Warning From City of Portland Park		
	- William Myers	Complaint Signer's Office,	Received
29	Notice of Exclusion or Warning From City of Portland Park		
	- Javier Garcia	Complaint Signer's Office,	Received
30	Notice of Exclusion or Warning From City of Portland Park		
	- Gordon Berquist	Complaint Signer's Office,	Received
31	Notice of Exclusion or Warning From City of Portland Park		
	- Derrick L. Mitchell	Complaint Signer's Office,	Received
32	Notice of Exclusion or Warning From City of Portland Park		
	- Charles R. Blackmon	Complaint Signer's Office,	Received
33	Notice of Exclusion or Warning From City of Portland Park		
	- Justin J. Hayes	Complaint Signer's Office,	Received
34	Notice of Exclusion or Warning From City of Portland Park		
	- Michael E. Kendell	Complaint Signer's Office,	Received
35	Notice of Exclusion or Warning From City of Portland Park		
	- Michael Wayne Lee	Complaint Signer's Office,	Received
36	Special Report by Officer Sanders	Complaint Signer's Office,	Received
37	Special Report by Officer J. Thompson	Complaint Signer's Office,	Received
38	Mailing List	Hearings Office	Received
39	Hearing Notice	Hearings Office	Received