



# CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

## Hearings Office

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## HEARINGS OFFICER'S ORDER

### APPEAL OF GENEVIER SULLIVAN

CASE NO. 3110520

DATE OF HEARING: November 21, 2011

### APPEARANCES:

None

HEARINGS OFFICER: Mr. Gregory J. Frank

### FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Ms. Genevieve Sullivan ("Sullivan") filed an Appeal to the City of Portland Hearings Officer ("Appeal"), on or about November 4, 2011, contesting the validity of a Notice of Exclusion From City of Portland Park (the "Exclusion") that was issued on November 3, 2011 (Exhibit 12). Sullivan listed, as her mailing address, 8059 17<sup>th</sup> Ave, Burnaby BC, V3N1M5. A Notice of Hearing was sent to Sullivan, at the address provided by Sullivan, on November 14, 2011 (Exhibit 5). Exhibit 5 stated, in part, that the Sullivan appeal hearing was scheduled for November 21, 2011 at 3:30 p.m. in Room 3000 on the 3<sup>rd</sup> floor, 1900 SW 4<sup>th</sup> Avenue, Portland, Oregon. Exhibit 5 also included information related to presenting evidence at the hearing and how/when to request a postponement of the scheduled hearing. Sullivan, following the mailing of the Notice of Hearing (Exhibit 5) did not contact the Hearings Office. Sullivan did not appear at the hearing on November 21, 2011. No person appeared at the hearing to testify on behalf of the City of Portland ("City"). The Hearings Officer makes this decision based upon the written documents admitted into the record (Exhibits 1 through and including 6).

The Exclusion states that the reason for Sullivan being issued a park exclusion was that on November 3, 2011, Sullivan allegedly violated Portland City Code ("PCC") 20.12.040 (Alcohol in Park). A person violates PCC 20.12.040 if the person possesses or consumes any alcoholic beverage in any City of Portland Park.

Sullivan, in the Appeal, included a narrative discussion of why she believed the Exclusion was not valid (Exhibit 1). Sullivan stated, in the Appeal, that:

"I was picking up garbage at this park when two officers came around the corner into the camp. They said I was drinking. I was not. They didn't even check the can to see if anything was in the can. I am a volunteer and have witnesses that will vouch for me."

The police officer who issued the Exclusion submitted a Custody Report into the record (Exhibit 4). The police officer, in Exhibit 4, states:

"While on patrol in above park I found Sullivan in the park with an open can of Milwaukee Best beer with her. I cited her for alcohol in a park and excluded her for 30 days from Chapman Square. She presented me with ID from British Columbia."

The Hearing Officer finds, based upon the evidence in the record, that it is undisputed that Sullivan had a beer can in her possession in Chapman Square Park. The Hearings Officer finds that the police report (Exhibit 4) did not state that Sullivan consumed alcohol in Chapman Square Park. The only dispute, based upon the evidence in the record, is whether any alcohol was in the can of beer that was held by Sullivan. Sullivan's statement was that the police officer did not check the can; she did not deny that alcohol was in the can of beer. The Hearings Officer finds that it is more likely than not that Sullivan, on November 3, 2011, did possess a can of beer with alcohol in the can. The Hearings Officer finds that it is more likely than not that on November 3, 2011, Sullivan did violate PCC 20.12.040 by possessing alcohol in Chapman Square Park. The Hearings Officer finds the Exclusion is valid.

Sullivan was issued the Exclusion on November 3, 2011, and filed the Appeal on November 4, 2011. The term of the Exclusion is thirty (30) days. Pursuant to PCC 20.12.265 H. the Hearings Officer finds the remaining term of the Exclusion is twenty nine (29) days. The Hearings Officer finds that the remaining term of the Exclusion shall commence on the date of this Order and end at 4:30 p.m. on December 22, 2011.

#### ORDER AND DETERMINATION:

1. The Exclusion (Exhibit 1a) is valid; Sullivan's appeal is denied.
2. The term of the Exclusion from Chapman Square Park shall commence on the date of this Order and end at 4:30 p.m. on December 22, 2011.
3. The stay of the notice pending hearing is hereby immediately terminated.
4. This order has been mailed to the parties on November 23, 2011.
5. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: November 23, 2011



Gregory J. Frank, Hearings Officer

GJF: jeg/

## Enclosure

<b>Exhibit #</b>	<b>Description</b>	<b>Submitted by</b>	<b>Disposition</b>
1	Appeal Form page 1	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	PPB Special Report	Complaint Signer's Office,	Received
4	Custody Report	Complaint Signer's Office,	Received
4a	Notice of Exclusion or Warning From City of Portland Park	Complaint Signer's Office,	Received
5	Notice of Hearing	Hearings Office	Received
6	Mailing List	Hearings Office	Received