

CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

1900 SW 4th Avenue, Room 3100

Portland, OR 97201

phone: (503) 823-7307 - fax: (503) 823-4347

web: www.portlandoregon.gov/auditor/hearings



HEARINGS OFFICER'S ORDER

APPEAL OF STACEY FOILES

CASE NO. 3110340

[Police Bureau Case No. 11-65078]

PARK: Kelley Point Park

DATE OF HEARING: September 6, 2011

APPEARANCES:

Ms. Stacey Foiles, Appellant

Mr. Joseph Schilling, on behalf of the City

HEARINGS OFFICER: Ms. Kimberly M. Graves

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Ms. Foiles appeared on her own behalf at the hearing. Mr. Schilling appeared on behalf of the City of Portland Parks and Recreation ("Parks"). The Hearings Officer makes this decision based upon the testimony of Ms. Foiles and Mr. Schilling, and the exhibits admitted into the evidentiary record (Exhibits 1 through, and including, 8).

A Notice of Exclusion From City of Portland Park (the "Exclusion") (Exhibit 6) was mailed to Ms. Foiles by the Parks. The Exclusion states, in relevant part, that on July 27, 2011, Ms. Foiles was observed leaving the North Meadow of Kelley Point Park with two dogs which were "off-leash." The Exclusion indicates that Ms. Foiles, on July 27, 2011, violated Portland City Code ("PCC") 20.12.140 [Animals] and 21.12.240 [Rules and Regulations, Directions of Park Officers to be Obeyed]. The Exclusion lists Kelley Point Park as the City park from which Ms. Foiles would be excluded for 30 days. Ms. Foiles submitted a request for an appeal hearing (Exhibits 1, and 1a).

PCC 20.12.140 [Animals] states, in part, that "no person owning, in control of or responsible for any dog shall allow that dog to be in any Park if the dog is not held securely on a leash..." PCC 20.12.240

[Rules and Regulations, Directions of Park Officers to be Obeyed] states, in part, “no person shall ...refuse or fail to obey any reasonable direction of a Park Officer.”

Mr. Schilling testified that he is employed by Parks and on July 27, 2011, was in uniform and working with a partner at Kelley Point Park. Mr. Schilling testified that at 10:50 a.m., he observed Ms. Foiles leaving the North Meadows of the park with two dogs, off-leash. Mr. Schilling testified that one dog was close to Ms. Foiles, while the other was closer to himself and his partner. Mr. Schilling testified that it appeared that Ms. Foiles saw him and his partner and then turned the other direction. Mr. Schilling testified that as Ms. Foiles turned away from him, one of the dogs defecated in the park. Mr. Schilling testified that he was able to catch up with Ms. Foiles in the parking lot after she had turned away from his partner. Mr. Schilling testified that Ms. Foiles refused to stop, and provided him with a false name and address. Mr. Schilling testified that Ms. Foiles loaded her dogs into her car and drove off stating that he could “do some detective work” if he wished to identify her. Mr. Schilling testified that he had a previous contact with Ms. Foiles on January 17, 2011 at Kelley Point Park. Mr. Schilling testified that he warned Ms. Foiles on January 17, 2011 about having her dogs off-leash.

Ms. Foiles testified that she was rude on July 27, 2011 to Mr. Schilling, but that she saw him running at her and was concerned for her safety. Ms. Foiles admitted to having her dogs off-leash in the park. Ms. Foiles stated that she had the dogs off-leash by the water and the dogs had run ahead of her into the park before she could leash them. Mr. Foiles stated that she did provide false information to Mr. Schilling and told him that if he was a “real Park Ranger” he could find out her identity based on her license plate. Ms. Foiles indicated that she was warned in January 2011 for having her dogs off-leash in the park.

The Hearings Officer finds, as there is no conflicting or competing evidence, that the testimony of Mr. Schilling and Ms. Foiles indicates that Ms. Foiles did not have her dogs on a leash prior 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 Ms. Foiles was in violation of PCC 20.12.140 for allowing her dogs to be in a park at a time in which they were not held securely on a leash. The Hearings Officer finds that Kelley Point Park is a “park” as defined in PCC 20.04.010. The Hearings Officer finds that it is more likely than not that Ms. Foiles was in violation of PCC 20.12.140. The Hearings Officer finds that the Exclusion is valid and therefore Ms. Foiles’ appeal is denied.

The Exclusion was issued to Ms. Foiles on July 27, 2011 and Ms. Foiles filed her appeal on August 1, 2011. The term of the Exclusion is for 30 days less the four days prior to filing of the appeal. The Hearings Officer finds that a stay of the Exclusion has been in effect since August 1, 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 October 2, 2011.

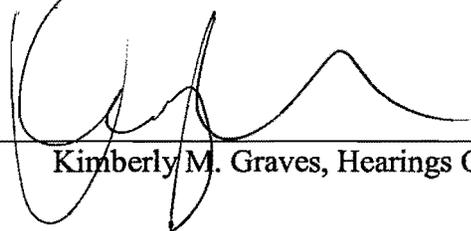
ORDER AND DETERMINATION:

1. The stay of the notice pending hearing shall terminate immediately, at which time the Exclusion term shall begin and run until 4:30 p.m. on October 2, 2011.
2. This order has been mailed to the parties on September 7, 2011.

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

Dated: September 7, 2011

KMG:jeg/rs



Kimberly M. Graves, Hearings Officer

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Appeal Form page 1a	Complaint Signer,	Received
1a	8/2/11 Letter from Stacey Foiles	Complaint Signer,	Received
2	Notice of Exclusion or Warning from City of Portland Park	Complaint Signer,	Received
3	Title and Statute List	Complaint Signer,	Received
4	Appeal Form page 2	Complaint Signer,	Received
5	Special Report	Complaint Signer,	Received
6	Notice of Exclusion or Warning from City of Portland Park	Complaint Signer,	Received
7	Mailing List	Hearings Office	Received
8	Hearing Notice	Hearings Office	Received