



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 JAMES LOPES

CASE NO. 3120253

[Police Bureau Case No. Unknown]

DATE OF HEARING: May 29, 2012

APPEARANCES:

Mr. James Lopes, Appellant

Officer Derek Harris, on behalf of the City

HEARINGS OFFICER: Ms. Kimberly M. Graves

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Mr. James Lopes appeared at the hearing on his own behalf. Officer Derek Harris appeared on behalf of the City. The Hearings Officer makes this decision based upon the arguments of Mr. Lopes, the testimony of Officer Harris, and the exhibits admitted into the evidentiary record (Exhibits 1 through, and including, 6).

Mr. Lopes made an opening statement, though declined to testify on his own behalf. In his opening statement, Mr. Lopes indicated that he has a history with the officer from last summer, and that he was not near anyone who was arrested. Mr. Lopes stated that he did not have any marijuana on him and that there is no basis for the exclusion. Mr. Lopes submitted Exhibits 1 through, and including, 3, for the Hearings Officer's consideration. Exhibit 1 is an appeal form. Mr. Lopes writes in Exhibit 1, "I guess I was talking to people doing drugs so I started walking down the park trail and they stopped me and said I was with these other and somehow that constutes (sic) a crime done by me." Exhibit 2 is a copy of the Notice of Exclusion or Warning from City of Portland Park which indicates a violation of Portland City Code (PCC) 20.12.040. The Notice of Exclusion lists Waterfront Park as the park which Mr. Lopes is excluded from for 180 days. Exhibit 3 is a complaint submitted to the Independent Police Review Division. Mr. Lopes has written on the complaint, "I was talking to some people in the park then I started walking to the mission on Burnside when two officers stoped (sic) me and told me I was doing drugs with these people and so they excluded me and gave me a ticket."

Officer Harris testified that on April 20, 2012, he was acting as a bike patrol officer in Waterfront Park when he contacted Mr. Lopes. Officer Harris testified that he contracts with Portland Patrol Inc. (PPI) and routinely patrols Portland parks and deals with alcohol and drug related issues. Officer Harris testified that on April 20, 2012, he received a radio call from a PPI officer telling him that the officer had seen 3 individuals smoking marijuana in Waterfront Park. Officer Harris testified that Mr. Lopes was identified as one of the three subjects. Officer Harris testified that he contacted Mr. Lopes after he had left the group, and that Mr. Lopes had an odor of marijuana. Officer Harris testified that he did not locate a marijuana cigarette or a pipe on Mr. Lopes. Officer Harris testified that he routinely contacts individuals who are involved in criminal drug activity, and that he did not notice signs of marijuana usage from Mr. Lopes other than an odor of marijuana. Officer Harris testified that he has personally excluded Mr. Lopes from a City of Portland park within the last 2 years, and is aware of numerous other exclusions issued to Mr. Lopes in the last year.

Upon cross examination by Mr. Lopes, Officer Harris testified that the contact occurred near Stark Street in Waterfront Park. Officer Harris testified that Mr. Lopes attempted to leave the area when officers approached, and that he was 75 to 100 feet way from where the drug use occurred when he was contacted. Officer Harris testified that in addition to the Notice of Exclusion, he also issued Mr. Lopes a citation for having drugs in the park. Officer Harris testified that he did not find any marijuana in Mr. Lopes' possession.

Mr. Lopes offered a brief closing argument. Mr. Lopes stated that he has dealt with the officer in the past on other exclusions. Mr. Lopes stated that he received two exclusions within days of each other. Mr. Lopes stated that there was no evidence presented of marijuana use or criminal activity. Mr. Lopes stated that he was excluded for 180 days because the officer knows him, not because it was warranted based on his history.

The City did not submit any documents for the Hearings Officer's review. The Notice of Exclusion, Exhibit 2, lists a violation of 20.12.040 as the code section which led to the issuance of the exclusion.

PCC 20.12.265A provides, "In addition to other remedies provided for violation of this Code, or of any of the laws of the State of Oregon, any Park Officer may exclude any person who violates any applicable provision of law in any Park from that park in accordance with the provisions of this section." PCC 20.12.265B defines "applicable provision of law" as including "any applicable provision of this code" PCC 20.12.265C provides "if the person to be excluded has been excluded from one or more Parks on two or more occasions within two years before the date of the present exclusion, the exclusion shall be for 180 days."

PCC 20.12.040 provides, in relevant part that "No person shall commit any of the following acts in a Park:

1. Sell, distribute, make available or offer to provide a controlled substance or prescription drug to another;
2. Package, possess or store a controlled substance;
3. Transport a controlled substance or materials intended to be used in the packaging of a controlled substance;
4. Solicit another to provide, make available, sell or distribute a controlled substance or prescription drug to any person; or

5. With the intent to engage in any act prohibited by this Section, seek, meet, approach or encounter another.”

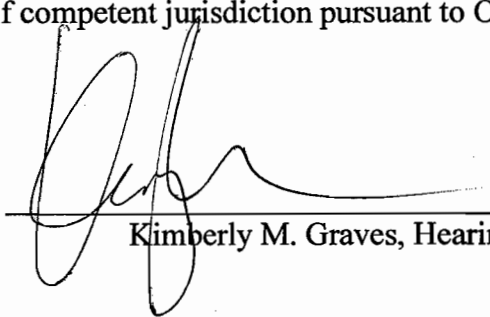
The Hearings Officer considers the testimony of Officer Harris to be credible, and to accurately reflect the conduct of Mr. Lopes which led to the issuance of the Notice of Exclusion on April 20, 2012. The Hearings Officer finds that Waterfront Park is a “park” as defined in PCC 20.04.010. The Hearings Officer finds that the testimony of Officer Harris alone is insufficient to provide the detailed information necessary to conclude that any of the conduct prohibited in PCC 20.12.040 occurred. The Hearings Officer finds that the Notice of Exclusion issued on April 20, 2012 is not valid and therefore Mr. Lopes’ appeal is granted.

ORDER AND DETERMINATION:

1. The Exclusion (Exhibit 2) from Waterfront Park issued to James Lopes on April 20, 2012 is not valid; Mr. Lopes’ appeal is granted.
2. This order has been mailed to the parties on June 1, 2012, and will become final and effective immediately.
3. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: June 1, 2012

KMG:c2/c1



Kimberly M. Graves, Hearings Officer

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Appeal Form page 1b	Lopes, James	Received
2	Notice of Exclusion or Warning From City of Portland Park	Lopes, James	Received
3	Independent Police Review Division Complaint	Lopes, James	Received
4	Mailing List	Hearings Office	Received
5	Notice of Hearing	Hearings Office	Received
6	Hearing Notice	Hearings Office	Received