



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 RONALD JACKSON SCHROEDER

CASE NO. 3100359

[Police Bureau Case No. 10-75023]

PARK: NW Waterfront Park

DATE OF HEARING: October 6, 2010

APPEARANCES:

Mr. Ronald Jackson Schroeder, Appellant

The City did not appear

HEARINGS OFFICER: Mr. Gregory J. Frank

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Appellant, Mr. Ronald Jackson Schroeder ("Mr. Schroeder"), appeared at the hearing and testified on his own behalf. No person appeared at the hearing to testify on behalf of the City. The Hearings Officer makes this decision based upon the testimony of Mr. Schroeder and the documents admitted into the evidentiary record (Exhibits 1 through and including 13).

Mr. Schroeder received a Notice of Exclusion from NW Waterfront Park on September 9, 2010 for allegedly violating Portland City Code ("PCC") 20.12.040 [Alcohol in Park]. A person violates PCC 22.12.040 if the person sells, possesses or consumes any alcoholic beverage in any park, except under a concession or permit issued by the City of Portland.

The police officer who issued the Notice of Exclusion submitted a written report (Exhibit 5). Exhibit 5 includes the following relevant statements:

"While on patrol we contacted two subjects sitting on a bench at Waterfront Park, near the sea-wall. Sgt. Schoening asked KING to remove the paper from on top of the beer cans sitting between KING and Schroeder on the park bench. KING removed the paper revealing two cans of Milwaukie Ice beer (open at top) on the bench. I asked KING if the beer sitting next to Schroeder belonged to Schroeder and KING said he did not know. KING admitted that one of

the beers belonged to him. Schroeder was issued a citation with explanation of court date, time, and location. I issued him a Park Exclusion with explanation – he took his copy. Schroeder said he often drinks all day at Waterfront Park, but was not drinking the opened beer sitting next to him on the bench.”

Mr. Schroeder testified that on September 9, 2010, he was sitting on a bench in Waterfront Park when a person sat down next to him. Mr. Schroeder stated that when contacted by a police officer the person next to him said that the beers were his and not Schroeder’s. Mr. Schroeder stated that he does, on occasion, drink at Waterfront Park but he said that he does not drink early in the morning; Mr. Schroeder stated he was contacted by the police between 9:00 a.m. and 10:00 a.m. Mr. Schroeder testified that he was not drinking from either of the beers that the other person set down on the park bench on September 9, 2010. Mr. Schroeder offered to take a breathalyzer test to prove he had not consumed any alcohol.

A park exclusion shall be upheld by the Hearings Officer if there is a preponderance of the evidence in the record (more likely than not) that the person committed the alleged violation. In this case, Mr. Schroeder denied drinking an alcoholic beverage in Waterfront Park on September 9, 2010. In this case the police officer’s written statement does not include any observation of Mr. Schroeder drinking alcohol in Waterfront Park. The Hearings Officer finds the only possible evidence that Mr. Schroeder possessed an alcoholic beverage in Waterfront Park on September 9, 2010 was the police officer’s statement that Mr. King claimed ownership to one of two beers sitting on the park bench. The Hearings Officer finds that if the police officer had been present and testified more fully as to the events it is possible that the Hearings Officer could have concluded that Mr. Schroeder did possess (or consume) an alcoholic beverage. The Hearings Officer finds that it is equally possible for the second beer (one not claimed by the other person sitting on the park bench) belonged to someone other than Mr. Schroeder. However, based solely on the evidence in the record, the Hearings Officer finds that the City did not carry its burden of persuasion (preponderance of evidence). The Hearings Officer finds it is not more likely than not that on September 9, 2010, Mr. Schroeder violated PCC 20.12.040 [Alcohol in Park]. The Hearings Officer finds the Notice of Exclusion issued to Mr. Ronald Jackson Schroeder on September 9, 2010 is not valid.

ORDER AND DETERMINATION:

1. The Notice of Exclusion issued to Mr. Ronald Jackson Schroeder on September 9, 2010 is not valid; Appellant prevailed in this appeal.
2. This order has been mailed to the parties on October 6, 2010.
3. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: October 6, 2010



Gregory J. Frank, Hearings Officer

GJF:cb/rs

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Appeal form page 1a	Complaint Signer,	Received
1a	Copy of Notice of Exclusion	Complaint Signer,	Received
2	Appeal form page 2	Complaint Signer,	Received
3	Citation and Complaint	Complaint Signer,	Received
4	Special Report	Complaint Signer,	Received
5	Custody Report	Complaint Signer,	Received
6	Notice of Exclusion	Complaint Signer,	Received
7	Copy of Back side of Notice of Exclusion (front side copied through)	Complaint Signer,	Received
8	Officer's Affidavit	Complaint Signer,	Received
9	Copy of previous Notice of Exclusion on 6/25/10, issuing Officer Woodard	Complaint Signer,	Received
10	Copy of previous issuing Officer Woodard's Affidavit for previous exclusion	Complaint Signer,	Received
11	Copy of Portland Patrol Incident Report on previous exclusion, issuing Officer Woodard	Complaint Signer,	Received
12	Hearing notice	Hearings Office	Received
13	Mailing list	Hearings Office	Received