

# CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

## Hearings Office

1900 SW 4<sup>th</sup> Avenue, Room 3100

Portland, OR 97201

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

web: [www.portlandoregon.gov/auditor/hearings](http://www.portlandoregon.gov/auditor/hearings)



## HEARINGS OFFICER'S ORDER

### APPEAL OF JOSEPH ROSS HUFFMAN

CASE NO. 3110566

[Police Bureau Case No. 11-108903]

PARK: Waterfront Park

DATES OF HEARINGS: January 19, 2012 and February 16, 2012

### APPEARANCES:

Mr. Joseph Huffman, Appellant

The City did not appear

HEARINGS OFFICER: Ms. Kimberly M. Graves

### FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Mr. Huffman appeared on his own behalf at the hearing. No one appeared on behalf of the City of Portland Parks and Recreation ("Parks"). The Hearings Officer makes this decision based upon the testimony of Mr. Huffman and the exhibits admitted into the evidentiary record (Exhibits 1 through, and including, 6).

Mr. Huffman received a Notice of Exclusion or Warning from City of Portland Park (Exhibit 4) on December 15, 2011. The Exclusion states, in relevant part, that on December 15, 2011, Mr. Huffman had alcohol while in a City of Portland Park. Mr. Huffman's possession of alcohol in the park is a violation of Portland City Code ("PCC") 20.12.040 [Unlawful Acts Involving Alcohol]. The Exclusion lists Waterfront Park as the City Park from which Mr. Huffman would be excluded for 30 days. Mr. Huffman submitted a request for an appeal hearing and a written statement (Exhibits 1 and 2).

20.12.040 [Unlawful Acts Involving Alcohol] states, in part, that no person shall possess or consume any alcoholic beverage in any park, except under a concession contract or lease, or by permit issued under Chapter 20.08.

The Notice of Exclusion was issued by Officer Sanders on December 15, 2011. Officer Sanders also completed a Custody Report, Exhibit 4a, in which he writes, "While on patrol in Waterfront park, I found (x1) Huffman sitting on a park bench. He had a nearly empty can of Rainer beer sitting next to him with a metal coffee cup next to it. (x1) Huffman handed me the can, which had about ½ ounce of beer left in it. He became very uncooperative when asked to dispose of the beer in the coffee cup, but eventually he complied. I issued him a cite for the alcohol in the park and excluded him for thirty days. He was very angry when he left with his paperwork."

Mr. Huffman testified that he didn't have alcohol with him when the officers "pedaled up" on him. Mr. Huffman stated that he was drinking coffee and that he had not had alcohol for a few days before the contact. Mr. Huffman stated that he didn't know why the officers "pedaled up" on him and that he provided them with his information when requested to do so. Mr. Huffman stated that the officers then accused him of drinking alcohol. Mr. Huffman indicated that he believed the conduct of the officers was a violation of the United States Code (USC). (see Exhibit 1a)

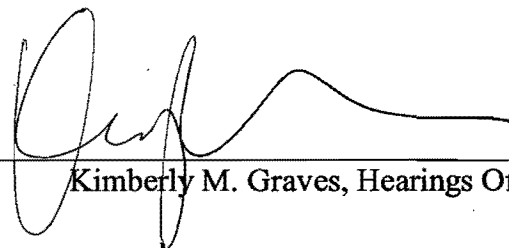
Parks has the burden of persuasion in this case; it must show, by a preponderance of the evidence, that the Exclusion was validly issued to Mr. Huffman on December 15, 2011. PCC 20.12.265A provides that a Park officer may exclude any person who violates any applicable provision of law in any Park. The Hearings Officer finds that Mr. Huffman has provided sworn testimony which is directly in conflict with the information provided by Parks in Exhibits 4 and 4a. The Hearings Officer finds that without further explanation from Parks, the Hearings Officer cannot conclude that Parks has met its burden with respect to the Notice of Exclusion issued to Mr. Huffman on December 15, 2011. Thereby, the Hearings Officer finds that Parks has failed to meet its burden of persuasion with regards to the Exclusion issued to Mr. Huffman on December 15, 2011. The Hearings Officer finds the Exclusion issued to Mr. Huffman on December 15, 2011, is not valid.

#### ORDER AND DETERMINATION:

1. The Notice of Exclusion or Warning From City of Portland Park issued to Joseph Huffman on December 15, 2011, (Exhibit 4) is not valid; the appellant prevails in this appeal.
2. This order has been mailed to the parties on February 17, 2012.
3. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: February 17, 2011

KMG;jeg/rs



Kimberly M. Graves, Hearings Officer

Enclosure

| <b>Exhibit #</b> | <b>Description</b>  | <b>Submitted by</b>        | <b>Disposition</b> |
|------------------|---|----------------------------|--------------------|
| 1                | Appeal Form page 1a                                       | Complaint Signer's Office. | Received           |
| 1a               | 12/15/11 Letter from Joseph Huffman                       | Complaint Signer's Office. | Received           |
| 1b               | 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                | Notice of Exclusion or Warning From City of Portland Park | Complaint Signer's Office. | Received           |
| 4a               | PPB Custody Report  | Complaint Signer's Office. | Received           |
| 4b               | Oregon Uniform Citation and Complaint                     | Complaint Signer's Office. | Received           |
| 5                | Mailing List  | Hearings Office            | Received           |
| 6                | Notice of Hearing   | Hearings Office            | Received           |