



# CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

## Hearings Office

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## HEARINGS OFFICER'S ORDER

### APPEAL OF RANDY COLLINS

CASE NO. 3100372

[Police Bureau Case No. 10-77452]

PROPERTY / ZONE / PARK: Waterfront Park

DATE OF HEARING: September 30, 2010

### APPEARANCES:

Appellant did not appear

Officer Jacob Jensen, for the City

HEARINGS OFFICER: Mr. Gregory J. Frank

### FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Mr. Collins was mailed a Notice of Hearing on September 23, 2010 by U.S. Mail to the address provided by Mr. Collins in his request for an appeal hearing (address provided in Exhibit 1). The Notice of Hearing was not returned as undeliverable by the U.S. Mail service. Mr. Collins did not contact the Hearings Office prior to the hearing to request a set-over or continuance. Mr. Collins did not appear at the hearing. Portland Police Officer Jensen appeared at the hearing and testified on behalf of the City. The Hearings Officer makes this decision based upon the testimony of Officer Collins and the documents admitted into the evidentiary record (Exhibits 1 through and including 10).

Mr. Collins received a Notice of Exclusion on September 17, 2010 for allegedly violating Portland City Code ("PCC") section 20.12.140 (Animals). A person violates PCC 20.12.140 if a person has a dog in a City of Portland Park that is not in the person's immediate reach and control and/or if the person attaches the dog to any "tree, fence, railing, or other structure or facility in any Park, except to such structures or facilities as are designated for that purpose."

Mr. Collins, in his written request for Hearing (Exhibit 1) stated the reason he believed that the Notice of Exclusion issued to him on September 17, 2010 was not valid. Mr. Collins stated the following:

"I was given an exclusion order for dog off leash. My dog was leashed. I disagree with this. My dog was not off his leash. I feel I'm being singled out because I'm traveling."

Officer Jensen testified that on September 16, 2010, while conducting bicycle patrol in Waterfront Park, he observed a dog off leash. Officer Jensen stated, on September 16, 2010, he gave a Warning to Mr. Collins. (Exhibit 8). Officer Jensen stated that on September 17, 2010 he again observed Mr. Collins in Waterfront Park. Officer Jensen stated that he observed Mr. Collins' dog (black/white bulldog) attached to a yellow shopping cart and that no part of the leash was in contact with Mr. Collins. Officer Jensen testified that the shopping cart was mobile and was not intended to have a dog attached.

The Hearings Officer finds that the testimony of Officer Jensen is credible and accurately reflects the events prior to the issuance of a Warning (Exhibit 8), and Notice of Exclusion (Exhibit 6) to Mr. Collins. The Hearings Officer finds that Mr. Collins was issued a Warning for not having his dog on a leash and was issued the Notice of Exclusion for having his dog attached to a shopping cart. The Hearings Officer finds that Mr. Collins did not indicate whether or not he was in contact with his dog, the dog leash, or the shopping cart at the time he was contacted by Officer Jensen and issued the Notice of Exclusion. The Hearings Officer finds that Mr. Collins, when observed on September 17, 2010 by Officer Jensen (1) did not have contact with his dog, (2) did not have contact with the leash attached to his dog or (3) did not have contact with the shopping cart to which the dog leash was attached. The Hearings Officer finds that the shopping cart is not a structure or facility designated as a location to "hitch" an animal.

The Hearings Officer finds, by a preponderance of the evidence in the record, that Mr. Collins received a warning on September 16, 2010 while in the City of Portland Waterfront Park related to a violation of PCC 20.12.040. The Hearings Officer finds, by a preponderance of the evidence in the record, that Mr. Collins did, on September 17, 2010, violate PCC 20.12.040 by having his dog attached to a shopping cart while in the City of Portland Waterfront Park. The Hearings Officer finds the Notice of Exclusion issued to Mr. Randy Eugene Collins on September 17, 2010 is valid.

The Hearings Officer finds that the Notice of Exclusion was issued on September 17, 2010 and Mr. Collins' appeal was filed on September 18, 2010. The Hearings Officer finds that the term of the Notice of Exclusion issued to Mr. Collins is 30 days. A stay of the exclusion term has been in effect since September 18, 2010. The Hearings Officer finds that the balance of the Notice of Exclusion term is 29 days and shall run from the effective date of this Order.

#### ORDER AND DETERMINATION:

1. The Notice of Exclusion (Exhibit 6) issued to Mr. Randy Eugene Collins on September 17, 2010 is valid; Mr. Collins' appeal is denied.
2. The term of the Notice of Exclusion shall begin on October 6, 2010 and end at 4:30 p.m. on November 3, 2010.
3. This order has been mailed to the parties on October 1, 2010 and shall become effective on October 6, 2010.
4. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: October 1, 2010

GJF:cb

  
Gregory J. Frank, Hearings Officer

## Enclosure

<b>Exhibit #</b>	<b>Description</b>	<b>Submitted by</b>	<b>Disposition</b>
1	Appeal form page 1a	Complaint Signer,	Received
1a	Notice of Exclusion or Warning from City of Portland Park	Complaint Signer,	Received
2	Appeal form page 2	Complaint Signer,	Received
3	Special Report	Complaint Signer,	Received
4	Custody Report	Complaint Signer,	Received
5	Special Report	Complaint Signer,	Received
6	Notice of Exclusion or Warning from City of Portland Park	Complaint Signer,	Received
7	Oregon Uniform Citation and Complaint	Complaint Signer,	Received
8	Notice of Exclusion or Warning from City of Portland Park	Complaint Signer,	Received
9	Mailing List	Hearings Office	Received
10	Hearing Notice	Hearings Office	Received

