



CITY OF PORTLAND

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HEARINGS OFFICER'S ORDER

APPEAL OF PRISCILLA L. SEABORG

CASE NO. 3110023

[Police Bureau Case No. 11-005231]

PARK: Hoyt Arboretum

DATE OF HEARING: March 8, 2011

APPEARANCES:

Ms. Priscilla Seaborg, Appellant

Mr. Kurt Nelson, for the City

HEARINGS OFFICER: Mr. Gregory J. Frank

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Ms. Priscilla Seaborg ("Seaborg") appeared on her own behalf at the hearing. Mr. Kurt Nelson ("Nelson") appeared on behalf of the City of Portland Parks and Recreation ("Parks"). Ms. Kirsten Provenzano ("Provenzano") and Mr. William Mitchell ("Mitchell") appeared as witnesses for Parks. The Hearings Officer makes this decision based upon the testimony of Provenzano, Mitchell and Seaborg, the exhibits admitted into the evidentiary record (Exhibits 1, 2, 10, 11, 14, 15, 16, 17, 21, 22, 23 and 24) and the arguments presented by Seaborg and Nelson.

Nelson mailed a letter (Exhibit 24), on behalf of Parks, to Seaborg with an enclosed copy of a Notice of Exclusion From City of Portland Park (the "Exclusion") (Exhibits 10, 11 and 20). The Exclusion states, in relevant part, that on January 13, 2011, a Parks technician observed Seaborg accompanying a dog that was off leash. The Exclusion indicates that Seaborg, on January 13, 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 Hoyt Park ("Hoyt") as the City park from which Seaborg would be excluded for 90 days. Seaborg submitted a request for an appeal hearing (Exhibits 1, 9 and 10).

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."

Provenzano testified that she is employed by Parks and conducts her work activities at Hoyt. Provenzano stated that on January 13, 2011, while conducting maintenance at Hoyt she observed a dog (the "Weimaraner"), at an approximate distance of 50 to 100 feet, in the vicinity of the Bristlecone Pine Trail (the "Trail"). Provenzano stated, based upon past contacts with Seaborg, that the Weimaraner belonged to Seaborg. Provenzano stated she subsequently saw Seaborg, walking away from Provenzano's location, on the Trail. Provenzano stated that she believed Seaborg to be subject to a current City of Portland Park exclusion for Hoyt Park. Provenzano stated she also believed the Weimaraner was not connected to a leash. Upon cross examination, Provenzano stated that she did not see a leash or the leash cord and therefore could not say for certain the Weimaraner was "on a leash" or "off leash." The affidavit of Nelson, the person who issued the Exclusion, states in relevant part, that Seaborg was "seen by Kirsten Provenzano (PP &R Park Tech) well known to K.P., w/ her dog off-leash. On Bristlecone Pine trail in Hoyt" (Exhibit 11, page 2).

Seaborg testified that on January 13, 2011, she was walking with the Weimaraner on the Trail and that the Weimaraner was connected to a retractable leash. Seaborg admitted the Weimaraner would occasionally wander, a short distance, off of the Trail but that the Weimaraner was always connected to the leash.

The Hearings Officer finds that the underlying reason for issuing the Exclusion to Seaborg (Exhibit 11) was Seaborg's alleged failure to have the Weimaraner on a leash in Hoyt Park. Exhibit 11 states in two places (One Sentence Summary of incident on page 1 and observation of Provenzano referenced on page 2) that Seaborg's violation was the failure to have the Weimaraner on a leash. PCC 20.12.140 B does require, excepting in designated off-leash areas, a dog owner to have his/her dog on leash while in a Portland Park. Therefore, the critical finding in this case is for the Hearings Officer to determine if, based upon a preponderance of the evidence, it is more likely than not that the Weimaraner was on leash on January 13, 2011.

The Hearings Officer finds that Seaborg, without reservation, stated that the Weimaraner was on leash while on the Trail on January 13, 2011. The Hearings Officer finds that Provenzano, the person who observed Seaborg and the Weimaraner on the Trail on January 13, 2011, was less confident in her testimony. Provenzano stated that although the Weimaraner appeared to be off leash she could not be certain that the Weimaraner was not attached to a leash.

Parks has the burden of persuasion in this case; it must show, by a preponderance of the evidence that it is more likely than not that the Weimaraner was off leash while on the Trail on January 13, 2011. The Hearings Officer finds that the key witnesses, Seaborg and Provenzano, are both credible. The Hearings Officer finds that Seaborg's testimony that the Weimaraner was on a leash on January 13, 2011 was unequivocal. The Hearings Officer finds the testimony of Provenzano to be less certain. The Hearings Officer finds that Parks failed to carry its evidentiary burden to show that it was more likely than not that the Weimaraner was not on leash while in Hoyt Park on January 13, 2011. The Hearings Officer finds the Exclusion issued to Seaborg on January 14, 2011 (for Seaborg's alleged actions on January 13, 2011) is not valid.

ORDER AND DETERMINATION:

1. The Notice of Exclusion or Warning From City of Portland Park issued to Priscilla Seaborg on January 14, 2011 (Exhibit 11) is not valid; the appellant prevails in this appeal.
2. This order has been mailed to the parties on March 11, 2011.
3. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: March 11, 2011



Gregory J. Frank, Hearings Officer

GJF:rs

Enclosure

| Exhibit # | Description | Submitted by | Disposition |
|-----------|---|----------------------------|-------------|
| 1 | Appeal letter from Priscilla L. Seaborg | Complaint Signer's Office, | Received |
| 2 | Appeal form page 2 | Complaint Signer's Office, | Received |
| 3 | Special Report | Complaint Signer's Office, | Not Offered |
| 4 | Fax cover sheet from Seaborg with notation | Complaint Signer's Office, | Not Offered |
| 5 | Appeal form page 1a | Complaint Signer's Office, | Not Offered |
| 6 | 11/15/10 letter, Kurt Nelson to Seaborg | Complaint Signer's Office, | Not Offered |
| 7 | Notice of Exclusion or Warning From City of Portland Park - issued 11-15-10 | Complaint Signer's Office, | Not Offered |
| 8 | Notice of Exclusion or Warning From City of Portland Park - issued 1/14/11 | Complaint Signer's Office, | Not Offered |
| 9 | 1/17/11 letter from Seaborg (duplicate of Exh. 1) | Complaint Signer's Office, | Not Offered |
| 10 | 1/20/11 letter from Seaborg to Hearings Office | Complaint Signer's Office, | Received |
| 11 | Notice of Exclusion or Warning From city of Portland Park - issued 1/14/11 | Complaint Signer's Office, | Received |
| 12 | Notice of Exclusion or Warning From City of Portland Park - issued 8/23/09 | Complaint Signer's Office, | Not Offered |
| 13 | Notice of Exclusion or Warning From City of Portland Park - issued 11/15/10 | Complaint Signer's Office, | Not Offered |
| 14 | 1/20/11 letter to Hearings Office | Seaborg, Priscilla L. | Received |
| 15 | 1/17/11 letter to Portland Police Bureau | Seaborg, Priscilla L. | Received |
| 16 | Mailing List | Hearings Office | Received |
| 17 | Hearing Notice | Hearings Office | Received |
| 18 | 1/21/11 letter | Seaborg, Priscilla L. | Not Offered |
| 19 | Appeal form 1a (duplicate of Exh. 5) | Seaborg, Priscilla L. | Not Offered |
| 20 | Notice of Exclusion or Warning From City of Portland Park - issued 1/14/11 (duplicate of Exh. 8) | Seaborg, Priscilla L. | Not Offered |
| 21 | 2/15/11 Reschedule request letter with attachment | Seaborg, Priscilla L. | Received |
| 22 | United Airlines Itinerary | Seaborg, Priscilla L. | Received |
| 23 | Hearing Notice | Hearings Office | Received |
| 24 | 1/14/11 letter, Nelson to Seaborg | Nelson, Kurt | Received |