



CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF MARK TIMOTHY ARLOTT

CASE NO. 3110149

[Police Bureau Case No. 11-26936]

PARK: Waterfront Park

DATE OF HEARING: May 6, 2011

APPEARANCES:

Officer Jacob Jensen, on behalf of the City

Appellant did not appear

HEARINGS OFFICER: Ms. Kimberly M. Graves

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Mr. Mark Timothy Arlott did not appear at the hearing or offer any evidence or testimony on his own behalf. Officer Jacob Jensen appeared and testified on behalf of the City. The Hearings Officer, on her own motion, admits Exhibits 1 through and including 10 into the evidentiary record.

The Hearings Officer finds that Mr. Arlott received the Notice of Exclusion from a City of Portland Park (Tom McCall Waterfront Park) that is subject to this case on April 5, 2011 at approximately 3:00 p.m. (Exhibit 4). Mr. Arlott received the Exclusion on April 5, 2011 for allegedly violating section 20.12.140-Animals of the Portland City Code (PCC). Officer Jensen, the officer who issued the Exclusion, writes in his custody report, Exhibit 4b, that he observed Mr. Arlott standing with a group of people and a medium sized black dog that was on a leash, but the leash was not being held by anyone. Officer Jensen writes that he contacted the group and Mr. Arlott claimed the dog as his own.

The Exclusion indicates that Mr. Arlott, on April 5, 2011, violated Portland City Code ("PCC") 20.12.140 [Animals]. The Exclusion lists Waterfront Park as the City park from which Mr. Arlott would be excluded for 180 days. Mr. Arlott submitted a request for an appeal hearing (Exhibit 1).

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...”

Officer Jensen testified that he is a Portland Police Officer currently assigned to bicycle detail. He testified that on April 5, 2011 he was riding his bicycle in Waterfront Park when he observed a group of people standing on the seawall near SW Stark. Officer Jensen testified that he observed a medium black dog with the group. The black dog had a leash attached to it, but the leash was not being held; it was lying on the ground. Officer Jensen testified that he contacted the group and Mr. Arlott indicated that the dog belonged to him. Officer Jensen testified that Mr. Arlott admitted that he had been warned in other parks about keeping his dog on a leash, but that he hadn't been warned while in Waterfront Park. Officer Jensen testified that he obtained Mr. Arlott's name and date of birth and conducted a search through the Portland Police data system. Through his search, Officer Jensen testified, that he learned Mr. Arlott had received four exclusions from Portland city parks within the past two years. Officer Jensen testified that he personally had warned Mr. Arlott on August 11, 2011 while in the South Park Blocks for engaging in the same conduct with his dog.

Mr. Arlott did not appear at the hearing though stated on his Appeal request form “go walk around Tom McCall Waterfront Park and count how many signs say to leash pets I have found none if there are no signs it's a dog park I assume.” Mr. Arlott submitted no other documentation or testimony.

The Hearings Officer finds that the evidence in the record is the testimony of Officer Jensen and the documents admitted into the evidentiary record. Mr. Arlott provided no additional evidence into the evidentiary record, aside from his appeal request.

The Hearings Officer finds, as there is no conflicting or competing evidence, that the testimony of Officer Jensen is credible and that Officer Jensen's testimony accurately reflects the events leading up to the issuance of the Exclusion. The Hearings Officer finds that the preponderance of the evidence in the record is that it is more likely than not that Mr. Arlott failed to maintain control of his dog's leash while in Waterfront Park. The Hearings Officer finds it is more likely than not that Mr. Arlott had received at least one prior warning (see Exhibits 6) related to not having his dog properly leashed; and at least two prior exclusions from city parks in the preceding two years. The Hearings Officer finds that it is more likely than not that Mr. Arlott's dog was off-leash on April 5, 2011, in violation of PCC 20.12.140.

The Hearings Officer finds that the Exclusion is valid and therefore Mr. Arlott's appeal is denied.

The Exclusion was issued to Mr. Arlott on April 5, 2011 and Mr. Arlott filed his appeal the same day. The term of the Exclusion is 180 days. The Hearings Officer finds that a stay of the Exclusion has been in effect since April 5, 2011. The Hearings Officer finds that the stay shall continue in effect until May 11, 2011, at which time the Exclusion term shall begin and run until 4:30 p.m. on November 8, 2011.

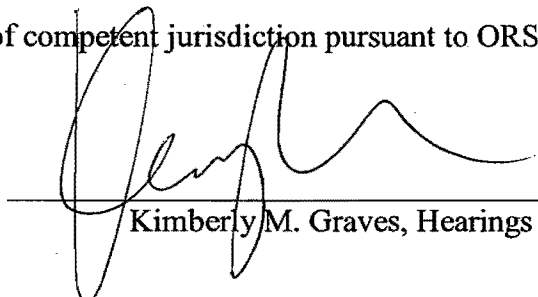
ORDER AND DETERMINATION:

1. The Exclusion (Exhibit 1a) from Tom McCall Waterfront Park issued to Mark Arlott on April 5, 2011 is valid; Mr. Arlott's appeal is denied.

2. The stay of the Exclusion shall remain in effect until May 11, 2011, the effective date of this order. The Exclusion from Tom McCall Waterfront Park shall commence on May 11, 2011 and end at 4:30 p.m. on November 8, 2011.
3. This order has been mailed to the parties on May 6, 2011, and will become final and effective on May 11, 2011.
4. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: May 6, 2011

KMG:rs/jeg



Kimberly M. Graves, Hearings Officer

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Appeal form page 1a	Complaint Signer's Office,	Received
1a	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	Special Report	Complaint Signer's Office,	Received
4	Notice of Exclusion or Warning From City of Portland Park	Complaint Signer's Office,	Received
4a	Issuing Person's Sworn Statement/Affidavit	Complaint Signer's Office,	Received
4b	Custody Report	Complaint Signer's Office,	Received
5	Oregon Uniform Citation and Complaint	Complaint Signer's Office,	Received
6	Notice of Exclusion or Warning From City of Portland Park	Complaint Signer's Office,	Received
6a	Issuing Person's Sworn Statement/Affidavit	Complaint Signer's Office,	Received
7	Mailing List	Hearings Office	Received
8	Hearing Notice	Hearings Office	Received
9	Request to reschedule	Jensen, Officer J.	Received
10	Hearing Notice	Hearings Office	Received