



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 RICHARD A. FEIST

CASE NO. 3110203

[Police Bureau Case No. 11-42271]

PARK: Johnson Lake Natural Area

DATE OF HEARING: June 23, 2011

APPEARANCES:

Appellant did not appear

Joseph Dezso, on behalf of the City

Brenton Chose, on behalf of the City

HEARINGS OFFICER: Ms. Kimberly M. Graves

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Mr. Richard Feist did not appear at the hearing or offer any evidence or testimony on his own behalf. Park Rangers Mr. Joseph Dezso and Mr. Brenton Chose appeared and testified on behalf of the City. The Hearings Officer, on Mr. Dezso's motion, admits Exhibits 1 through and including 7 into the evidentiary record.

The Hearings Officer finds that Mr. Feist received the Notice of Exclusion from a City of Portland Park (Johnson Lake Natural Area) which is the subject of this case on May 22, 2011 at approximately 1:15 p.m. (Exhibit 2). Mr. Feist received the Exclusion on May 22, 2011 for allegedly violating sections 20.12.090-Disposing of Rubbish and 20.12.240-Rules and Regulations, Direction of Park Officers to be Obeyed of the Portland City Code ("PCC"). Mr. Chose writes in his report that a bicycle and garbage were located in the Johnson Lake Natural Area on May 22, 2011. Mr. Feist identified the items as his.

The Exclusion indicates that Mr. Feist, on May 22, 2011, violated PCC 20.12.090-Disposing of Rubbish and 20.12.240-Rules and Regulations, Direction of Park Officers to be Obeyed. The Exclusion lists the

Johnson Lake Natural Area as the City Park from which Mr. Feist would be excluded for 180 days. Mr. Feist submitted a request for an appeal hearing (Exhibit 1).

PCC 20.12.090 Disposing of Rubbish states, in part, that “no person shall place any garbage, or other rubbish, or refuse or debris . . . in or upon any Park. . . No person shall enter any Park with garbage, or other rubbish or refuse or debris that has originated from outside the Park, for the purpose of disposing of any of the rubbish, refuse or debris in the Park.” PCC 20.12.240 Rules and Regulations, Directions of Park Officers to be Obeyed states, in part, that “No person shall violate any rule or regulation established under the authority of Section 20.04.020 or 20.04.050, nor refuse or fail to obey any reasonable direction of a Park Officer.”

Mr. Dezso testified that on May 22, 2011 he and Mr. Chose were in the Johnson Lake Natural Area when they observed a bicycle locked to a tree. Around the bicycle they observed two 30 gallon black garbage bags containing garbage. Mr. Dezso testified that he and Mr. Chose located Mr. Feist in the area and Mr. Feist admitted that the bicycle and garbage belonged to him. Mr. Dezso testified that Mr. Feist had been warned on October 5, 2010 for “littering” in a City Park. Mr. Dezso testified that Mr. Feist had been excluded from Portland City Parks on October 30, 2010 for a period of 30 days, and again on November 1, 2010 for a period of 90 days. Mr. Dezso testified that he and Mr. Chose were present for the Exclusion issued on October 30, 2010 but not for the Exclusion issued on November 1, 2010. Mr. Dezso testified that he confirmed the existence of the November 1, 2010 exclusion by checking the Portland Police data system.

Mr. Feist did not appear at the hearing though did include a brief statement on his Appeal request form. The request is very difficult to read and appears to state: “1. litter attached to locked bike; 2. Presented voluntary compliance order same day path 5/24/11; 3. No prior exclusion.”

The Hearings Officer finds that the evidence in the record is the testimony of Mr. Dezso and the documents admitted into the evidentiary record. Mr. Feist 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 Mr. Dezso is credible and that Mr. Dezso’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. Feist placed garbage, rubbish, refuse or debris in the Johnson Lake Natural Area. The Hearings Officer finds that the Johnson Lake Natural Area is a “park” as defined in PCC 20.04.010. The Hearings Officer finds it is more likely than not that Mr. Feist had received at least one prior warning related to littering in a park, 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. Feist littered in a City of Portland Park on May 22, 2011, in violation of PCC 20.12.240.

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

The Exclusion was issued to Mr. Feist on May 22, 2011 and Mr. Feist filed his appeal on May 24, 2011. The term of the Exclusion is for 180 days less the two days prior to filing of the appeal. The Hearings Officer finds that a stay of the Exclusion has been in effect since May 25, 2011. The Hearings Officer finds that the stay shall continue in effect until June 29, 2011, at which time the Exclusion term shall begin and run until 4:30 p.m. on December 23, 2011.

ORDER AND DETERMINATION:

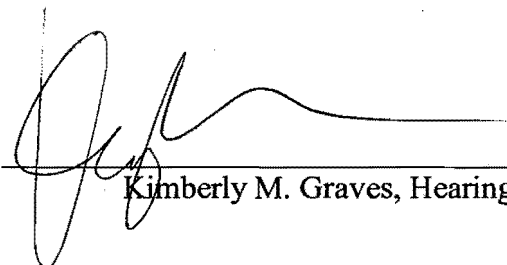
The stay of the notice pending hearing shall terminate on June 29, 2011, at which time the Exclusion term shall begin and run until 4:30 p.m. on December 23, 2011.

This order has been mailed to the parties on June 24, 2011.

This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: June 24, 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
2	Notice of Exclusion or Warning From City of Portland Park	Complaint Signer's Office,	Received
3	Appeal form page 2	Complaint Signer's Office,	Received
4	Special Report	Complaint Signer's Office,	Received
5	Notice of Exclusion or Warning From City of Portland Park	Complaint Signer's Office,	Received
6	Mailing List	Hearings Office	Received
7	Hearing Notice	Hearings Office	Received