



# 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 JAMES LOPES

CASE NO. 3110407

DATE OF HEARING: October 13, 2011

### APPEARANCES:

Officer David Sanders, for the City

Appellant did not appear

HEARINGS OFFICER: Mr. Gregory J. Frank

### FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Mr. Lopes was sent a Notice of Hearing (Exhibit 8) on September 23, 2011 to the mailing address provided by Mr. Lopes in his request for an appeal hearing (Exhibit 1). Mr. Lopes did not contact the Hearings Office to indicate he could not attend the hearing scheduled for October 13, 2011. Mr. Lopes did not appear at the October 13, 2011 hearing. Portland Police Officer Sanders appeared at the hearing and testified on behalf of the City of Portland. The Hearings Officer makes this decision based upon the testimony of Officer Sanders and the documents admitted into the evidentiary record (Exhibits 1 through and including 8).

Mr. Lopes received a Notice of Exclusion from North Park Blocks on September 16, 2011 for allegedly violating Portland City Code ("PCC") 20.12.030 (Unlawful Urination or Defecation). A person violates PCC 20.12.030 if the person urinates in any City of Portland Park except in a convenience station designed for that purpose.

Mr. Lopes, in his request for an appeal hearing, stated the reason that he believed the Notice of Exclusion issued to him on September 16, 2011 was not valid was that "he [police officer] said I was doing something I wasn't when he came up."

Officer Sanders testified that on September 16, 2011, he was on bicycle patrol in the North Park Blocks when he observed Mr. Lopes standing alone in the vicinity of a fountain. Officer Sanders stated that

September 16, 2011, at the time he observed Mr. Lopes, was dry (no rain). Officer Sanders stated he rode his bike to a location close to where Mr. Lopes was standing where he saw Mr. Lopes, facing the fountain, with his hands down in his crotch area. Officer Sanders stated that Mr. Lopes then looked up, saw Officer Sanders and immediately turned away. Officer Sanders stated that while Mr. Lopes was turning away, he observed Mr. Lopes pants were unzipped. Officer Sanders stated that he observed the location where Mr. Lopes had been facing and saw wetness on the wall surface and a pool of liquid on the ground. Officer Lopes stated that the pool of liquid smelled like urine.

Officer Sanders stated that he checked with police records and was informed that Mr. Lopes was subject to two or more active City of Portland park exclusions.

The Hearings Officer finds that the testimony of Officer Sanders is credible. The Hearings Officer finds the statement of Mr. Lopes to be a simple denial without any further explanation. The Hearings Officer finds that without Mr. Lopes' presence, the Hearings Officer finds the statement by Mr. Lopes to be less credible than the testimony of Officer Sanders.

The Hearings Officer finds, by a preponderance of the evidence in the record, that it is more likely than not that on September 16, 2011, Officer Sanders did observe Mr. Lopes urinate while within the North Park Blocks City of Portland Park. The Hearings Officer finds that Mr. Lopes has been subject to two or more City of Portland park exclusions. The Hearings Officer finds the term of this exclusion, per PCC 22.12.265.C is one hundred eighty (180) days. The Hearings Officer finds that Mr. Lopes filed his request for an appeal hearing on the date he received the exclusion that is subject to this Order.

#### ORDER AND DETERMINATION:

1. The Notice of Exclusion from North Park Blocks park issued on September 16, 2011 (Exhibit 2) is valid; Mr. Lopes appeal is denied.
2. The term of the exclusion shall commence on October 19, 2011 and end at 4:30 p.m. on April 14, 2012.
3. This order has been mailed to the parties on October 14, 2011.
4. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: October 14, 2011

GJF:rs

Enclosure

  
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Gregory J. Frank, Hearings Officer

<b>Exhibit #</b>	<b>Description</b>	<b>Submitted by</b>	<b>Disposition</b>
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
2a	Issuing Person's Sworn Statement/Affidavit	Complaint Signer's Office.	Received
3	Custody Report	Complaint Signer's Office.	Received
4	Appeal form page 2	Complaint Signer's Office.	Received
5	Special Report	Complaint Signer's Office.	Received
6	Oregon Uniform Citation and Complaint	Complaint Signer's Office.	Received
7	Mailing List	Hearings Office	Received
8	Hearing Notice	Hearings Office	Received