



CITY OF PORTLAND

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HEARINGS OFFICER'S ORDER

APPEAL OF ARLIE CONNER

CASE NO. 3110403

DATE OF HEARING: October 6, 2011

APPEARANCES:

Mr. Arlie Conner, Appellant

The City did not appear

HEARINGS OFFICER: Mr. Gregory J. Frank

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Mr. Conner appeared at the hearing and testified on his own behalf. No person appeared at the hearing to testify on behalf of the City. The Hearings Officer makes this decision based upon the testimony of Mr. Conner and the documents admitted into the evidentiary record (Exhibits 1 through and including 9).

Mr. Conner received two Notices of Exclusion from Portland Parks on August 29, 2011. The first was received at Sellwood Park (SE 7th Avenue and Miller Street, Portland, Oregon) for allegedly violating Portland City Code ("PCC") sections 20.12.140 and 20.12.240 and the second at Sellwood Riverfront Park (SE Spokane and Oaks Park Way) for allegedly violating PCC 20.12.140 and 20.12.240. Sellwood Park and Sellwood Riverfront Park are two separate and distinct parks within the City of Portland Parks system. Mr. Conner stated that his appeal only relates to the second Notice of Exclusion received at Sellwood Riverfront Park.

Although Mr. Conner is only appealing the Notice of Exclusion issued at Sellwood Riverfront Park, the Hearings Officer finds a brief review of circumstances surrounding both exclusions is necessary. The Hearing Officer, for the purpose of this summary, relies upon Mr. Conner's hearing testimony.

Mr. Conner testified that on August 29, 2011, he took his dog to Sellwood Park. Mr. Conner stated that August 29, 2011 was a very hot day in Portland. Mr. Conner stated that while at Sellwood Park (not an off leash area/park) his dog was not on a leash. Mr. Conner stated that he was aware, on August 29,

2011, that he made a mistake by not having his dog on leash in Sellwood Park. Mr. Conner stated that he was contacted by one or more City of Portland Park Ranger(s). Mr. Conner, feeling that he was going to be issued an expensive citation, quickly departed Sellwood Park in an attempt to avoid receipt of the citation. Mr. Conner stated he traveled to Sellwood Riverfront Park, with his dog on a leash, where he tied the dog to a tree and "went swimming."

Mr. Conner stated that one or more City of Portland Park Ranger(s) contacted him at Sellwood Riverfront Park. Mr. Conner stated that he once again walked away from the Park Ranger; an action he characterized in his testimony at the hearing as "dumb." Mr. Conner confirmed that he did give the Park Ranger an incorrect name in an attempt to avoid being issued a citation in his own name. Mr. Conner stated that his dog remained on a leash at all times he was in Sellwood Riverfront Park on August 29, 2011.

The Hearings Officer notes that the Park Ranger's written report (Exhibit 7b) is generally consistent with the hearing testimony of Mr. Conner as set forth above.

PCC section 20.12.265 describes Park Exclusions. PCC 20.12.265 A states that "any Park Officer may exclude any person who violates any applicable provision of law in any Park from that Park." PCC 20.12.265 C states, in relevant part, "an exclusion issued under the provisions of this section shall be for thirty (30) days. If the person to be excluded has been excluded from any Park at any time within two years before the date of the present exclusion, the exclusion shall be for ninety (90) days."

PCC 20.12.140, in summary, is violated if a person has a dog in a City Park (excepting recognized "off-leash" areas) that is not on a leash. PCC 20.12.240, in summary, is violated if a person, while in a City Park, refuses or fails "to obey any reasonable direction of a Park Officer."

Mr. Conner received a Notice of Exclusion from Sellwood Park, on August 29, 2011, for failure to have his dog on leash and for failing to obey a park directive by a Park Ranger. As noted above, Mr. Conner did not appeal or contest the August 29, 2011 Sellwood Park Notice of Exclusion. The Hearings Officer finds that the August 29, 2011 Sellwood Park Notice of Exclusion constitutes a "first" exclusion from a City Park within a two year time period. The Hearings Officer finds that the thirty (30) day term of the Sellwood Park Exclusion began on August 29, 2011 and ran until September 27, 2011.

Mr. Conner received the Notice of Exclusion from Sellwood Riverfront Park, the Notice of Exclusion that is subject to this appeal decision, for allegedly violating the same two sections of the PCC that were in the first Notice of Exclusion for Sellwood Park; PCC 20.12.140 and 20.12.240. The Hearings Officer finds there is no persuasive evidence in the record that while Mr. Conner and his dog were in Sellwood Riverfront Park on August 29, 2011, the dog was off leash or otherwise out of Mr. Conner's control. However, there is ample evidence in the record, including Mr. Conner's own testimony, that he gave the Park Ranger, on August 29, 2011 while in Sellwood Riverfront Park, an incorrect name. The Hearings Officer finds that giving an incorrect name to a Park Ranger, when the Park Ranger asks the person for identification, is a violation of PCC 20.12.240. The Hearings Officer finds that the Notice of Exclusion issued to Mr. Conner on August 29, 2011 while in Sellwood Riverfront Park is a separate and distinct violation of PCC 20.12.240 than that occurring while Mr. Conner was in Sellwood Park on August 29, 2011. The Hearings Officer finds that the August 29, 2011 Sellwood Riverfront Park Notice of Exclusion constitutes a "second" exclusion from a City Park within a two year time period. The

appropriate term of a "second" exclusion from a City Park within a two year time period is ninety (90) days.

The Hearings Officer finds that Mr. Conner filed his appeal on September 14, 2011 (17 days after the Notice of Exclusion was issued). Therefore, the Hearings Officer finds the remaining term of the Notice of Exclusion to be 73 days.

ORDER AND DETERMINATION:

1. The Notice of Exclusion (Exhibit 2) is valid; Mr. Conner's appeal is denied.
2. The stay of the notice pending hearing is terminated and the exclusion term shall begin on the date of this Order and run until 5:00 p.m. on December 22, 2011.
3. The effective date of this Order shall be October 11, 2011.
4. This Order has been mailed to the parties on October 11, 2011.
5. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: October 11, 2011



Gregory J. Frank, Hearings Officer

GJF:rs

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	9/1/11 letter from Conner	Complaint Signer's Office,	Received
4	Appeal form page 2	Complaint Signer's Office,	Received
5	Special Report	Complaint Signer's Office,	Received
6	Complaint Signer Note	Complaint Signer's Office,	Received
7	Notice of Exclusion or Warning From City of Portland Park	Complaint Signer's Office,	Received
7a	Issuing Person's Sworn Statement/Affidavit	Complaint Signer's Office,	Received
7b	Park Rangers Special Report	Complaint Signer's Office,	Received
8	Mailing List	Hearings Office	Received
9	Hearing Notice	Hearings Office	Received