



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 MARIO JAVIER DAVID HARO

CASE NO. 3110549

DATE OF HEARING: December 22, 2011

APPEARANCES:

Mr. Mario Javier David Haro, Appellant

Mr. Art Hendricks, for the City

HEARINGS OFFICER: Mr. Gregory J. Frank

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Mr. Mario Javier David Haro ("Haro") appeared at the hearing and represented himself. Haro also testified on his own behalf. Ms. Jennifer Degregorio ("Degregorio") appeared at the hearing and testified on behalf of Haro. Mr. Art Hendricks ("Hendricks") appeared at the hearing as the City of Portland ("City") representative. Hendricks also testified on behalf of the City. Police Officer Dan Spiegel ("Spiegel") appeared as a witness for the City.

The Hearings Officer admitted Exhibits 1, 2, 2a, 7 and 8 on his own motion; all related to the filing and processing of the Haro appeal. The Hearings Officer also admitted Exhibit 10 on his own motion. Hendricks and Haro agreed to the admission of Exhibits 3, 4 and 4a. The Hearings Officer admitted Exhibit 9 over the objection of Haro; the Hearings Officer found Exhibit 9 to contain relevant evidence. Exhibits 5, 5a, 5b, 5c, 5d, 5e and 6 were not admitted into the evidentiary record. The Hearings Officer makes this decision based upon the testimony of Haro, Degregorio, Hendricks and Spiegel and the documents admitted into the evidentiary record.

Prior to the taking of testimony the Hearings Officer explained to Hendricks and Haro that each party had a right to request a continuance in the hearing in order to secure the services of legal counsel. Both Hendricks and Haro indicated a desire to continue with the hearing without being represented by legal counsel.

The Hearings Officer takes note of Exhibits 2a and Exhibit 4a. The parties agree that these documents (duplicate copies) are a fair and accurate representation of the Notice of Exclusion issued to Haro on December 5, 2011. The subject of Haro's appeal, in this case, is the validity of the Notice of Exclusion issued to him on December 5, 2011, by Hendricks (Exhibits 2a and 4a). The Hearings Officer highlights portions of Exhibits 2a and 4a below:

- The laws/rules allegedly violated by Haro, resulting in the issuance of the Notice of Exclusion included (a) failure to obey directions of a park officer [Portland City Code 20.12.240] and (b) camping in a park [Portland City Code 14A.50.020]; and
- The term of the Notice of Exclusion is 30 days; and
- The Park listed as applying to Haro's exclusion is "Shemanski."

Portland City Code ("PCC") provides that a person receiving a Notice of Exclusion from a City Park may appeal to the City of Portland Code Hearings Officer. In an appeal of a Notice of Exclusion from a City Park, the Hearings Officer:

"shall uphold the exclusion if, upon the Code Hearings Officer's de novo review, the preponderance of evidence admissible under the provisions of Title 22 of this Code convinces the Code hearings Officer that, more likely than not, the person in fact committed the violation, and if the exclusion is otherwise in accordance with law."

The Hearings Officer shall focus the balance of this decision on the requirement that the Hearings Officer finds that the "exclusion is otherwise in accordance with law." The Hearings Officer notes that PCC 20.12.265 A states, in part, that "any Park Officer may exclude any person who violates any applicable provision of law from that Park..." Exhibits 2a and 4a (duplicate copies) have a boxed check indicating "Exclusion Notice: Starting today, you cannot remain in or upon, or enter in or upon the City of Portland Park known as Shemanski for a time period of 30 days."

The Hearings Officer takes note of Exhibit 4, a police special report, prepared by Spiegel. In Exhibit 4, Spiegel states that he was "dispatched to the listed location regarding people camping in Shemanski Square...while in Shemanski Square Officer Jackson and myself saw SB (Haro) sleeping in a sleeping bag in Shemanski Square."

Hendricks, in Exhibit 9, indicates that location of the incident with Haro, on December 5, 2011, was "South Park Blocks- Shemanski Square." Hendricks further referenced the location as the "South Park Blocks at Shemanski square (SW Park Ave & SW Main)."

The Hearings Officer takes judicial notice of the City of Portland Parks website at <http://www.portlandonline.com/parks/finder/index.cfm?action=ViewPark&PropertyID=674&subareas=6>. This website identifies twelve downtown Portland blocks that together constitute the South Park Blocks. This website references a block between Main and Salmon as the location of a monument referred to as the Shemanski Fountain.

The Hearings Officer has consistently found, in park exclusion appeal cases, that PCC 20.12.265 A allows a park ranger to exclude a person from *the* park where identified PCC violative conduct occurred. The Hearings Officer finds that the Notice of Exclusion form provides a park ranger a blank to identify *the* City of Portland Park from which the person is excluded. PCC 20.12.265 A and the Notice of

Exclusion form do not provide the issuing park ranger the option of excluding a person from a portion of a City Park.

In this case the Hearings Officer finds there is no Shemanski Square City of Portland Park. The Hearings Officer finds that the Shemanski Fountain monument is located in a portion of the South Park Blocks; one block of 12 total blocks comprising the South Park Blocks.

The Hearings Officer finds that it is the obligation of the park ranger issuing a Notice of Exclusion to correctly identify *the* City of Portland Park from which the excluded party may not enter for the designated term. In this case, the issuing park ranger identified a city block in downtown Portland that is a part of a much larger park. The Hearings Officer finds such improper identification creates a serious risk of legal jeopardy to the excluded party. For example, Haro may reasonably believe that he has a right, during the term of the exclusion, to enter one of the other eleven South Park blocks.

Hendricks did not offer any evidence as to whether the Notice of Exclusion issued to Haro on December 5, 2011, restricted Haro's entry, during the exclusion term, to just the single South Park block where the Shemanski Fountain is located or to all of the South Blocks. As the Notice of Exclusion was written, Haro risks being arrested for Trespass if enters any South Park block.

The Hearings Officer finds that the Notice of Exclusion issued to Haro (Exhibits 2a and 4a) fails to adequately apprise Haro of the City of Portland Park from which he is excluded. The Hearings Officer finds that the Notice of Exclusion form (Exhibits 2a and 4a) were not completed (filled out) in accordance with PCC 20.12.265 F; the Notice of Exclusion therefore was not completed in accordance with law. The Hearings Officer finds that the Notice of Exclusion issued to Mario Javier David Haro on December 5, 2011, is not valid.

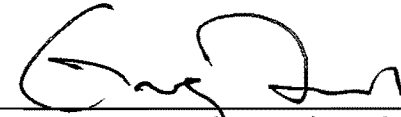
The Hearings Officer, having made a decision in this case, need not address the factual disputes related to whether or not Haro violated PCC 14A.50.020 or PCC 20.12.240. The Hearings Officer need not address Haro's assertions that his actions, on December 5, 2011, were protected by the United States and/or Oregon Constitutions.

ORDER AND DETERMINATION:

1. The Notice of Exclusion from a City of Portland Park (Exhibits 2a and 4a) on December 5, 2011, to Mr. Mario Javier David Haro is not valid.
2. The Notice of Exclusion from a City of Portland Park (Exhibits 2a and 4a) on December 5, 2011, to Mr. Mario Javier David Haro shall not become effective.
3. This order has been mailed to the parties on December 27, 2011.

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

Dated: December 27, 2011



Gregory J. Frank, Hearings Officer

GJF:jeg/rs

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Appeal Form Page 2	Complaint Signer's Office,	Received
2	Appeal Form Page 1	Complaint Signer's Office,	Received
2a	Notice of Exclusion or Warning From City of Portland Park	Complaint Signer's Office,	Received
3	PPB Special Report: 11-105032	Complaint Signer's Office,	Received
4	PPB Special Report: 11-105032	Complaint Signer's Office,	Received
4a	Notice of Exclusion or Warning From City of Portland Park	Complaint Signer's Office,	Received
5	PPB Special Report / Supplemental: 11-104655	Complaint Signer's Office,	Rejected
5a	PPB Special Report / Information: 11-010465	Complaint Signer's Office,	Not Offered
5b	Notice of Exclusion or Warning From City of Portland Park: Harrison-Bowen	Complaint Signer's Office,	Not Offered
5c	Notice of Exclusion or Warning From City of Portland Park: Benning	Complaint Signer's Office,	Not Offered
5d	Notice of Exclusion or Warning From City of Portland Park: Henry	Complaint Signer's Office,	Not Offered
5e	Notice of Exclusion or Warning From City of Portland Park: Collins	Complaint Signer's Office,	Not Offered
6	Park Rangers Special Report	Complaint Signer's Office,	Rejected
7	Mailing List	Hearings Office	Received
8	Notice of Hearing	Hearings Office	Received
9	Special Report	Hendricks, Art	Received
10	Address	Haro, Mario Javier David	Received