



CITY OF  
**PORTLAND, OREGON**  
OFFICE OF THE CITY AUDITOR  
Hearings Office

**LaVonne Griffin-Valade, City Auditor**  
1900 SW 4<sup>th</sup> Avenue, Room 3100  
Portland, Oregon 97201  
Telephone: (503) 823-7307  
Fax: (503) 823-4347  
TDD: (503) 823-6868  
[www.portlandonline.com/auditor/hearings](http://www.portlandonline.com/auditor/hearings)

**HEARINGS OFFICER'S ORDER**

TriMet vs. Heather Marie Green

CASE NO. 3100060  
(TriMet Exclusion Number 154556)

HEARING DATE: February 23, 2010

APPEARANCES:

None

HEARINGS OFFICER: Gregory J. Frank

**FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

**Timelines:** The Hearings Officer finds the following concerning the Notice of Exclusion being issued:

TriMet issued the Notice of Exclusion to Ms. Heather Marie Green on February 12, 2010. The case was forwarded to the City of Portland Hearings Office on February 12, 2010. The Hearings Office mailed a hearing notice to the parties on February 16, 2010, within the time prescribed in the TriMet Code. The notice contained the required information concerning Ms. Green's rights in the hearing process.

**Sufficiency of the Notice of Exclusion:** A copy of the Notice of Exclusion was provided to Ms. Green when she was excluded. The notice did reference the violating conduct/applicable code provision.

**Stays:** The exclusion was subject to an automatic stay upon being issued.

**Mitigating and/or Aggravating Factors:** The Hearings Officer finds no mitigating or aggravating factors existed when the Notice of Exclusion was issued.

**Probability that the excluded individual engaged in the conduct supporting the exclusion:** Ms. Green was mailed a Notice of Hearing on February 16, 2010. The Notice was returned by the U.S. Mail Service as undeliverable and unable to forward. Ms. Green did not contact the Hearings Office prior to the hearing requesting that the hearing be rescheduled. Ms. Green did not appear at the hearing. No person appeared at the hearing to testify on behalf of TriMet. The Hearings Officer makes this decision based the documents admitted into the evidentiary record (Exhibits 1 through and including 6).

The police officer who issued Ms. Green the Notice of Exclusion on February 12, 2010 submitted a written statement (Exhibit 3). The police officer, in the statement, says:

“Heather was smoking on the center isle smoking with her boyfriend David Justice. They were sitting on the bench between no smoking signs on either end of the platform.”

Ms. Green received the Notice of Exclusion on February 12, 2010 for allegedly violating TMC 28.15 A (smoking). A person violates TMC 28.15 A if the person smokes while on a TriMet District Station in an area posted to prohibit smoking.

The Hearings Officer finds the written statement of the police officer (Exhibit 3) to be credible and accurately reflect the events prior to the issuance of the Notice of Exclusion to Ms. Green on February 12, 2010. The Hearings Officer finds it is more probable than not that Ms. Green, on February 12, 2010, did smoke a cigarette on a TriMet District Station that was posted as a no smoking area. The Hearings Officer finds it is more probable than not that Ms. Green, on February 12, 2010, did violate TMC 28.15 A (smoking). The Hearings Officer finds that the Notice of Exclusion issued to Ms. Heather Marie Green on February 12, 2010 is valid.

Special Exceptions: The Hearings Officer finds there is no evidence in the record to suggest that Ms. Green is disabled, transit dependent, or that the exclusion is based upon expressive conduct or exercising religious opinion protected by the United States or Oregon Constitutions.

#### ORDER AND DETERMINATION:

1. Validity of the Notice of Exclusion:

The Hearings Officer sustains the Notice of Exclusion issued to Ms. Heather Marie Green on February 12, 2010.

2. Length of the Exclusion:

The exclusion shall become effective with this Order, on March 2, 2010, and shall conclude on March 31, 2010 at 5:00 p.m.

3. Scope of the Exclusion:

The scope of the exclusion shall be as described in the Notice of Exclusion.

4. This order has been mailed to the parties on February 24, 2010, not more than five (5) business days following the hearing, and will become final on March 2, 2010.

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

Dated: February 24, 2010

  
\_\_\_\_\_  
Gregory J. Frank, Hearings Officer

GJF: gj/cb

Enclosure

<b>Exhibit #</b>	<b>Description</b>	<b>Submitted by</b>	<b>Disposition</b>
<u>1</u>	Appeal Form page 2	Turner, Anna	<u>Received</u>
<u>2</u>	TriMet Fare Inspection System print out	Turner, Anna	<u>Received</u>
<u>3</u>	Notice of Exclusion	Turner, Anna	<u>Received</u>
<u>4</u>	Mailing list	Hearings Office	<u>Received</u>
<u>5</u>	Hearing notice	Hearings Office	<u>Received</u>
<u>6</u>	Statement of Rights	Hearings Office	<u>Received</u>