



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

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**HEARINGS OFFICER'S ORDER**

TriMet vs. Grant Brannaman

CASE NO. 3100059  
(TriMet Exclusion Number 154506)

HEARING DATE: February 23, 2010

APPEARANCES:

None

HEARINGS OFFICER: Mr. 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 Mr. Grant Brannaman on January 28, 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 Mr. Brannaman's rights in the hearing process.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Mr. Brannaman when he 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: Mr. Brannaman did not appear at the hearing; he did appear after the close of all TriMet hearings scheduled for 1:45 p.m. on February 23, 2010. The Hearings Officer makes the decision regarding the validity of the Notice of Exclusion issued to Mr. Brannaman on January 28, 2010 based upon the documents admitted into the evidentiary record (Exhibits 1 through and including 6; Exhibit 7 was admitted but only considered in the context of the appropriateness of issuing a qualified exclusion.

Exhibit 3, a statement by the police officer who issued the Notice of Exclusion to Mr. Brannaman on January 28, 2010, says that Mr. Brannaman was "contacted on eastbound Train line in the vicinity of the 82<sup>nd</sup> Max Platform. The police officer stated that Mr. Brannaman "did not have fare."

Mr. Brannaman received a Notice of Exclusion on January 28, 2010 for allegedly violating TMC 29.15 (fare violation). A person violates TMC 29.15 if the person does not have, in his possession while on a Max train, proof of purchase of a valid fare. The Hearings Officer finds the 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 Mr. Brannaman. The Hearings Officer finds it more probable than not that on January 28, 2010, while riding an eastbound Max train, Mr. Brannaman did not have in his possession proof of purchase of a valid fare. The Hearings Officer finds it more probable than not that on January 28, 2010 Mr. Brannaman did violate TMC 29.15. The Hearings Officer finds the Notice of Exclusion issued to Mr. Grant Brannaman on January 28, 2010 is valid.

Special Exceptions: Mr. Brannaman supplied a written document to the hearings office after the close of all 1:45 p.m. TriMet Hearings on February 23, 2010 (Exhibit 7). It appears, from Exhibit 7, that Mr. Brannaman *may* be transit dependent. However, the Hearings Officer finds that there is insufficient information in Exhibit 7 to make an affirmative finding that Mr. Brannaman is transit dependent. Further, Exhibit 7 indicates that he rides the Yellow Line Max to shop and travel to/from meetings. The Hearings Officer finds that Mr. Brannaman must provide more specific information regarding the reason he *needs* to ride TriMet vehicles, when (day and time) he needs to ride, and the precise locations where he needs to travel to/from. At this time the Hearings Officer shall not issue a qualified exclusion to Mr. Brannaman.

If Mr. Brannaman believes that he is transit dependent or disabled he may submit, in a writing to the Hearings Office, a request for a "Qualified Exclusion." A Qualified Exclusion permits a transit dependent person to utilize, on a limited basis, TriMet property and vehicles. To be considered for a Qualified Exclusion the writing submitted to the Hearings Office must include at least the following information:

- Why you feel you are transit dependent (i.e. no driver's license, no family or friends available to drive you to your desired locations) or disabled
- Residence address
- Address for all locations that are necessary to use TriMet
- Reasons trips are necessary (e.g., travel to and from medical and legal appointments, school or training classes, place(s) of employment, obtaining food, clothing and necessary household items, or for accessing any critical services)
- Days of week and time during the days when trips are expected to be made and the particular bus line or Max line #.

The Hearings Officer will make a determination, based upon the information supplied, whether or not Mr. Brannaman is transit dependent and which trips, if any, are trips of necessity.

#### ORDER AND DETERMINATION:

1. Validity of the Notice of Exclusion:

The Hearings Officer sustains the Notice of Exclusion issued to Mr. Grant Brannaman on January 28, 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

  
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Gregory J. Brank, Hearings Officer

GJF:gj/rs

Enclosure

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