



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

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**HEARINGS OFFICER'S ORDER**

TriMet vs. Martin Everett Rivers

CASE NO. 3100228  
(TriMet Exclusion Number 167171)

HEARING DATE: July 15, 2010

**APPEARANCES:**

Mr. Martin Everett Rivers, Excluded Party

Officer Chris Gjovik, for TriMet

HEARINGS OFFICER: Ms. Christina A. Austin-Smith

**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. Martin Everett Rivers on June 4, 2010. The case was forwarded to the City of Portland Hearings Office on June 11, 2010. The Hearings Office mailed a hearing notice and Interim Order to the parties on June 14, 2010, within the time prescribed in the TriMet Code. The notice contained the required information concerning Mr. Rivers' rights in the hearing process. The hearing was rescheduled and a new hearing notice and a Second Interim Order were mailed on June 17, 2010.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Mr. Rivers when he was excluded. The notice referenced the violating conduct/applicable code provision.

Stays: The exclusion was subject to an automatic stay upon being issued and was extended at the Hearings Officer's direction via Interim Order dated June 14, 2010 and June 17, 2010.

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: TriMet has the burden to demonstrate that it is more probable than not that the conduct forming the basis to issue the Notice of Exclusion occurred. Mr. Rivers appeared at the hearing. Officer Chris Gjovik appeared on behalf of TriMet.

The hearing was scheduled to start at 2:45 p.m. The hearing notice, Exhibit 5, put Mr. Rivers on notice of the start time and also indicated that "those arriving late may lose the opportunity to present their case or to hear other parties' testimony." The Hearings Office did not receive any request from Mr. Rivers to delay or postpone the hearing. Mr. Rivers was not present at 2:45 p.m. when the hearing commenced and overall procedural rules for the conduct of the hearings was presented to the audience.

At 3:02 p.m. Mr. Rivers' case was called. Mr. Rivers and Officer Gjovik were both called to the microphones. The Hearings Officer then attempted to provide Mr. Rivers with the procedural order and rules for the hearing, restating what he had missed at 2:45 p.m. Mr. Rivers refused to listen to the Hearings Officer's opening comments and continually interrupted, becoming confrontational. The Hearings Officer warned Mr. Rivers that his failure to cooperate could result in the hearing being terminated. After several warnings, the Hearings Officer terminated the hearing.

Therefore, because the hearing was terminated before either party had an opportunity to testify, the Hearings Officer makes this decision solely based upon Exhibits 1 through and including 9, which the Hearings Officer finds to be relevant and what a reasonable person would rely upon, therefore admitting them into the evidentiary record.

Officer Chris Gjovik, Transit Police Division, issued the exclusion to Mr. Rivers on June 4, 2010 and completed a typewritten report of the incident (Exhibit 3). Officer Gjovik wrote: "On the listed date and time my partner, Ofc. Brueby, and I were standing on the westbound platform of Lloyd TS. I was observing the eastbound platform and noticed a person that I have encountered on many occasions. This person, who was identified as (SB) Rivers, walks the platform and contacts Trimet passengers in attempt to sell them bundles of incense. I have personally told SB no less than two times in the past that he is not allowed to sell on Trimet property. The eastbound platform at Lloyd is a transit dedicated platform with no city sidewalk incorporated into the design. The platform sits isolated, on an island. There are however sidewalks on either side of Holladay St where pedestrians can travel. SB was seen walking from east to west on the platform, contacting people waiting for the train. This platform is also marked at each entrance with signs that warn in bold 'non-transit uses prohibited.' I waved SB over to me and told him that he was not allowed to sell his product on the platform. SB immediately became hostile and told me that I was threatening him. I tried to explain that I was trying to explain the regulations to him and I was just giving him a warning. SB became very argumentative. I told SB that he was to stay at the location and that I was going to write him an exclusion."

Officer Gjovik issued Mr. Rivers a Notice of Exclusion on June 4, 2010, for violating TriMet Code 28.15B Prohibited Misuse of District Transit System, specifically for Non-Transit Purposes. TriMet Code 28.15B(1) prohibits a person from entering or remaining on a District Station "for purposes other than boarding, disembarking or waiting for a District Vehicle, in an area where non-transit uses are prohibited by posted signage." It is only a violation if a person occupies the station "for a period of time that exceeds that which is reasonably necessary to wait for, board or disembark a District Vehicle."

The Hearings Officer finds, based on the written report of Officer Gjovik, which the Hearings Officer finds to be relevant and credible, that it is more probable than not that Mr. Rivers was using the eastbound platform at a District Station for purposes other than to wait for, board or disembark a District Vehicle. Specifically, the Hearings Officer finds Mr. Rivers was on the platform to sell his products to other passengers. The Hearings Officer finds that signage was posted in this area prohibiting non-transit use of the station. The Hearings Officer finds that Mr. Rivers was given a verbal warning, but when he failed to comply with the officer's request, he was issued an exclusion. The Hearings Officer finds that the Notice of Exclusion was properly issued to Mr. Rivers on June 4, 2010, and is valid.

Special Exceptions: The Hearings Officer finds there is no evidence in the record to suggest that Mr. Rivers 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 Mr. Martin Rivers on June 4, 2010.

2. Length of the Exclusion:

The exclusion shall become effective with this Order, on July 21, 2010, and shall conclude on August 20, 2010 at 5:00 p.m.

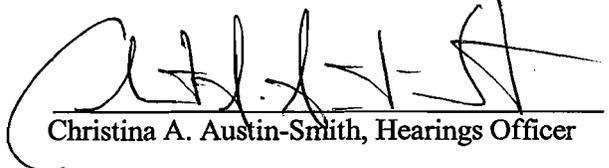
3. Scope of the Exclusion:

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

4. This order has been mailed to the parties on July 16, 2010, not more than five (5) business days following the hearing, and will become final on July 21, 2010.

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

Dated: July 16, 2010



Christina A. Austin-Smith, Hearings Officer

CAAS:gj/cb

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	Additional address for appellant	Turner, Anna	Received
8	Request to reschedule	Gjovik, Officer Chris	Received
9	Hearing Notice	Hearings Office	Received

