



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

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**HEARINGS OFFICER'S ORDER**

TriMet vs. Garrett B. Johnston

CASE NO. 3100237  
(TriMet Exclusion Number 148380)

HEARING DATE: July 13, 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. Garrett B. Johnston on June 15, 2010. The case was forwarded to the City of Portland Hearings Office on June 24, 2010. The Hearings Office mailed a hearing notice and Interim Order to the parties on June 24, 2010, within the time prescribed in the TriMet Code. The notice contained the required information concerning Mr. Johnston's rights in the hearing process.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Mr. Johnston 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. Johnston was mailed an Interim Order and Notice of Hearing on June 24, 2010. The Interim Order/Notice were not returned by the U.S. Mail Service and Mr. Johnston did not contact the Hearings Office prior to the hearing requesting that the hearing be rescheduled. Mr. Johnston 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 upon the documents admitted into the evidentiary record (Exhibits 1 through and including 6).

Mr. Johnston was issued the Notice of Exclusion on June 15, 2010 for allegedly violating TMC 29.15 – Fare Violation. A person violates TMC 29.15 (fare violation) if the person rides a TriMet vehicle without having, in his/her possession, proof of purchase of a valid fare.

Exhibit 3 contains a copy of the Notice of Exclusion issued to Mr. Johnston and also a written statement by the TriMet representative who issued the Notice of Exclusion to Mr. Johnston. TriMet representative Richard Vasquez, in Exhibit 3, states that Mr. Johnston "was aboard an eastbound blue line at Elmonica. I boarded there and began checking fares. Mr. Johnston showed me an H.C. monthly pass but had no card. He said he was in a treatment program. I told him I'd dismiss this if he obtained a valid H.C. card."

The Hearings Officer finds the only evidence in the record that relates to whether Mr. Johnston had a valid fare in his possession while riding a blue line Max train on June 15, 2010 is the written statement of TriMet representative Vasquez. The Hearings Officer finds, based upon the written statement of TriMet representative Vasquez, that it is more probable than not that Mr. Johnston, on June 15, 2010, did have a Honored Citizen card but did not display for review of TriMet representative Vasquez, proof of eligibility to purchase an Honored Citizen fare. A person who uses an Honored Citizen card is required to have purchased a fare and, in addition, have in their possession proof of eligibility. The Hearings Officer finds, based upon the evidence in the record that Mr. Johnston, on June 15, 2010 when contacted by TriMet representative Vasquez, did not display to TriMet representative Vasquez proof of eligibility for the Honored Citizen monthly pass. The Hearings Officer finds that it is more probable than not that on June 15, 2010 Mr. Johnston did violate TMC 29.15 – Fare Violation. The Hearings Officer finds the Notice of Exclusion issued to Mr. Garrett B. Johnston on June 15, 2010 is valid.

Special Exceptions: The Hearings Officer finds there is no evidence in the record to suggest that Mr. Johnston 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. Garrett B. Johnston on June 15, 2010.

2. Length of the Exclusion:

The exclusion shall become effective with this Order, on July 20, 2010, and shall conclude on August 18, 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 14, 2010, not more than five (5) business days following the hearing, and will become final on July 20, 2010.

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

Dated: July 14, 2010

GJF:cb

Enclosure

  
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Gregory J. Frank, Hearings Officer

<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

