



**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. Stevie Delane Whitfield

CASE NO. 3100242  
(TriMet Exclusion Number 166515)

HEARING DATE: July 15, 2010

**APPEARANCES:**

Mr. Stevie Whitfield, Excluded Party

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. Stevie Delane Whitfield on June 14, 2010. The case was forwarded to the City of Portland Hearings Office on June 25, 2010. The Hearings Office mailed a hearing notice and Interim Order to the parties on June 29, 2010, within the time prescribed in the TriMet Code. The notice contained the required information concerning Mr. Whitfield's rights in the hearing process.

**Sufficiency of the Notice of Exclusion:** A copy of the Notice of Exclusion was provided to Mr. Whitfield 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 by Interim Order on June 29, 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. Whitfield appeared at the hearing and testified on his own behalf. No one appeared and testified on behalf of TriMet. The Hearings Officer makes this decision based upon the testimony of Mr. Whitfield and also considered Exhibits 1 through and including 6, which the Hearings Officer find to be relevant and what a reasonable person would rely upon, therefore admitting them into the evidentiary record.

Officer Mike Powers, Gresham Police Department, issued the notice of exclusion to Mr. Whitfield. A copy of the exclusion notice and his typewritten report are at Exhibit 3. In his report, Officer Powers writes: "On 6/14/10 at approximately 3:07 pm the above listed subject got into a verbal argument with his ex-girlfriend while on Tri Met bus #2301. Near 6<sup>th</sup> and Taylor the subject spit in his ex-girlfriend's face and called her, 'A bitch.'" Accordingly, Officer Powers issued Mr. Whitfield a Notice of Exclusion on June 14, 2010, for violating TriMet Code 28.15C, engaging in criminal activity while in a District Station, specifically for violating ORS 166.065, Harassment.

Mr. Whitfield testified that everything in the admitted documents was true.

TriMet Code 28.15C prohibits individuals from engaging in "activity prohibited by the criminal laws of any state, county, or municipality, in which the criminal incident occurs, while on a District Vehicle or in or upon a District Station or District Parking Facility." ORS 166.065, in pertinent part, states: (1) "A person commits the crime of harassment if the person intentionally: (a) Harasses or annoys another person by: (A) subjecting such other person to offensive physical contact." The Oregon courts have ruled that spitting on another person is considered offensive physical contact, *State v. Keller*, 40 OR App 143, 594 P2d 1250, (1979).

The Hearings Officer finds, based on the report filed by Officer Powers and the admissions of Mr. Whitfield, that on June 14, 2010, while riding in a TriMet bus, Mr. Whitfield spit on another passenger, causing offensive physical contact which violated ORS 166.065, thus engaging in prohibited criminal activity on TriMet property.

The Hearings Officer finds this violation of ORS 166.065 a proper reason to excluded Mr. Whitfield from TriMet in accordance with TriMet Code 28.15(C). The Hearings Officer finds that the Notice of Exclusion was properly issued and is valid.

Special Exceptions: The Hearings Officer finds that Mr. Whitfield has no vehicle and is dependent on TriMet to meet court-required meetings and to find employment. Therefore, the Hearings Officer finds that Mr. Whitfield is transit dependent and granted him a qualified exclusion to ride on Bus Lines #15, #17 and the MAX Green Line on July 26, 2010, from 9 a.m. until 1 p.m. He may also ride on the MAX Green Line on September 1, 2010, from 2 p.m. until 6 p.m. Additionally, he may ride Bus Lines #9, #17, #71, #72 and the MAX Green Line, on Monday, Wednesday, and Friday, from 8 a.m. until 12 noon. Even though Mr. Whitfield has been granted a qualified exclusion, he must still follow all TriMet laws/rules while on TriMet property/vehicles. Violation of TriMet laws/rules, while on TriMet property/vehicles, may subject Mr. Oden during the term of this exclusion to being charged with the crime of Interfering with Public Transportation (ORS 166.116) or the crime of Criminal Trespass in the Second Degree (ORS 164.245).

#### ORDER AND DETERMINATION:

1. Validity of the Notice of Exclusion:

The Hearings Officer modifies the Notice of Exclusion issued to Mr. Stevie Whitfield on June 14, 2010.

2. Length of the Exclusion:

The exclusion shall become effective with this Order, on July 21, 2010, and shall conclude on Sept 19, 2010 at 5:00 p.m.

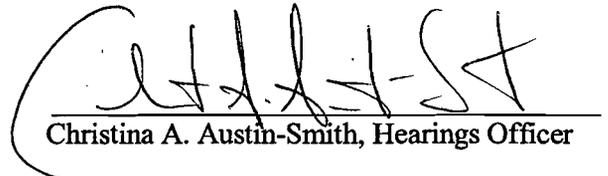
3. Scope of the Exclusion:

Mr. Whitfield shall be allowed to ride Bus Lines #15, #17 and the MAX Green Line on July 26, 2010, from 9 a.m. until 1 p.m. He may also ride on the MAX Green Line on September 1, 2010, from 2 p.m.

until 6 p.m. Additionally, he may ride Bus Lines #9, #17, #71, #72 and the MAX Green Line, on Monday, Wednesday and Friday, from 8 a.m. until 12 noon.

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

