



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

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**HEARINGS OFFICER'S ORDER**

TriMet vs. James A. Sickler

CASE NO. 3100245  
(TriMet Exclusion Number 121752)

HEARING DATE: July 15, 2010

**APPEARANCES:**

Mr. James A. Sickler, 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. James A. Sickler on June 25, 2010. The case was forwarded to the City of Portland Hearings Office on June 29, 2010. The Hearings Office mailed a hearing notice and Interim Order to the parties on June 30, 2010, within the time prescribed in the TriMet Code. The notice contained the required information concerning Mr. Sickler's rights in the hearing process.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Mr. Sickler 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 dated June 30, 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. Sickler 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. Sickler and the exhibits admitted, Exhibits 1 through and including 7. Mr. Sickler objected to the Hearings Officer considering Exhibit 3, stating that the officer who issued the exclusion did not see him commit the misconduct. The Hearings Officer overruled the objection, found the document relevant and admitted it into the record, noting, however, that the document's credibility would be reduced based on Mr. Sickler's unchallenged assertions.

Supervisor Teri King issued the Notice of Exclusion to Mr. Sickler and completed a handwritten report of the incident (Exhibit 3). Mr. Sickler received a Notice of Exclusion on June 25, 2010, for violating TriMet Code 28.15D(4), Prohibited Risks to Transit System Security and Order. Supervisor King wrote: "Mr. Sickler crossed tracks from the EB platform to the center platform."

Mr. Sickler testified that while at the Beaverton Transit Center, he was on the platform and noticed a cigarette down near the tracks. Mr. Sickler stated he checked, and seeing no trains coming, he stepped down off the platform to retrieve the cigarette, stepped over the tracks and back up onto the other platform. Mr. Sickler testified that Supervisor King did not see him walk across the tracks. Mr. Sickler also asserted that while there were signs indicating the tracks should not be crossed, nothing stated that an exclusion was the penalty.

TriMet Code 28.15D(4) lists as a prohibited risk "interference with or trespass on light rail or commuter rail right-of-way." It prohibits someone from entering or remaining upon the right-of-way of the light rail or commuter rail transit line, so as to create a hazard to that person or interfere with the passage of a District Vehicle. While the Code does not delineate the boundaries of the "right-of-way," the Hearings Officer finds that walking or stepping across the track would be included in the train's right-of-way. The Hearings Officer finds, based primarily on the testimony of Mr. Sickler, that Mr. Sickler was in the right-of-way of the train and did cross the track.

Accordingly, the Hearings Officer finds it is more probable than not that Mr. Sickler did trespass on the rail right-of-way. The Hearings Officer finds that the Notice of Exclusion was properly issued to Mr. Sickler on June 25, 2010, and is valid.

Special Exceptions: The Hearings Officer finds that Mr. Sickler is disabled and holds a TriMet Honored Citizen Pass. Therefore, the Hearings Officer granted him a qualified exclusion to ride to the MAX Blue Line and Bus Lines #4, 9, 12, 19, 20, & 57, seven days a week, all hours of the day. Even though Mr. Sickler 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. Sickler 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. James A. Sickler on June, 25, 2010.

2. Length of the Exclusion:

The exclusion shall become effective with this Order, on July 21, 2010, and shall conclude on October 18, 2010 at 5:00 p.m.

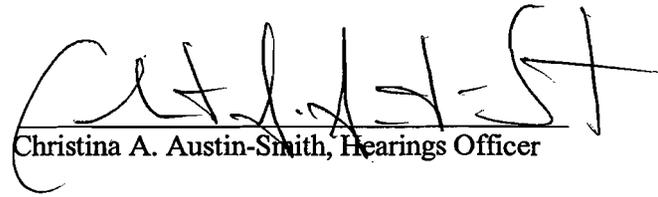
3. Scope of the Exclusion:

Mr. Sickler shall be allowed to ride the MAX Blue Line and Bus Lines #4, 9, 12, 19, 20, & 57, seven days a week, all hours of the day.

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	Letter from appellant requesting hearing	Turner, Anna	Received
5	Mailing list	Hearings Office	Received
6	Hearing notice	Hearings Office	Received
7	Statement of Rights	Hearings Office	Received

