



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

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**HEARINGS OFFICER'S ORDER**

TriMet vs. Tonisha R. Francis

CASE NO. 3100264  
(TriMet Exclusion Number 166828)

HEARING DATE: July 27, 2010

**APPEARANCES:**

Excluded Party did not appear

Officer Steven Sharp, 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 Ms. Tonisha R. Francis on July 11, 2010. The case was forwarded to the City of Portland Hearings Office on July 14, 2010. The Hearings Office mailed a hearing notice to the parties on July 14, 2010, within the time prescribed in the TriMet Code. The notice contained the required information concerning Ms. Francis' rights in the hearing process.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Ms. Francis when she was excluded. The notice referenced 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: 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. Ms. Francis failed to appear at the hearing and did not submit a written request to the Hearings Officer to reschedule the hearing. Ms. Francis did not contact the Hearings Office prior to the hearing via telephone, in person or fax. Ms. Francis did not present any evidence to contest the exclusion or the credibility/relevance of any evidence. Officer Steve Sharp appeared and testified on behalf of TriMet. The Hearings Officer makes this decision based upon the testimony of Officer Sharp and also considered Exhibits 1 through and including 6,

which the Hearings Officer finds to be relevant and what a reasonable person would rely upon, therefore admitting them into the evidentiary record.

Officer Sharp testified that on July 11, 2010, at 5:20 p.m., he was working at the eastbound platform of the 162<sup>nd</sup> Street and Burnside MAX station. He testified that he observed Ms. Francis get off the train and asked her to show her proof of fare. Officer Sharp testified that Ms. Francis told him she did not have her fare. He stated that Ms. Francis told him that she did not have a fare because she had already been excluded, but thought she could still ride for two weeks. Officer Sharp testified that he informed Ms. Francis she still needed to purchase a fare.

Officer Sharp issued Ms. Francis a Notice of Exclusion on July 11, 2010, for violating TriMet Code 29.15B, riding a District Vehicle without carrying proof of payment. TriMet Code 29.15B states "it shall be unlawful for any person to occupy, ride in or use, any District Vehicle without carrying proof of fare payment."

The Hearings Officer finds, based on the testimony of Officer Sharp and the evidence admitted into the record, that it is more probable than not that Ms. Francis did not pay her fare to ride the MAX train and was riding on a District Vehicle without carrying proof of payment. The Hearings Officer finds that the Notice of Exclusion was properly issued to Ms. Francis on July 11, 2010, and is valid.

Special Exceptions: The Hearings Officer finds there is no evidence in the record to suggest that Ms. Francis 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 Ms. Tonisha Francis on July 11, 2010.

2. Length of the Exclusion:

The exclusion shall become effective with this Order, on August 3, 2010, and shall conclude on September 2, 2010 at 5:00 p.m.

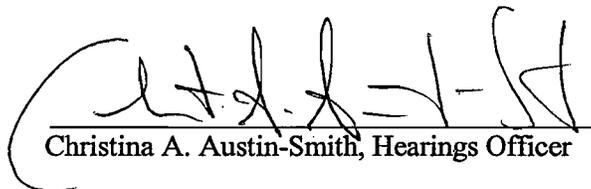
3. Scope of the Exclusion:

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 28, 2010, not more than five (5) business days following the hearing, and will become final on August 3, 2010.

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

Dated: July 28, 2010



Christina A. Austin-Smith, Hearings Officer

CAAS:cb/rs

Enclosure

<b>Exhibit #</b>	<b>Description</b>	<b>Submitted by</b>	<b>Disposition</b>
1	Appeal form page 2	Turner, Anna	Received
2	Fare Inspection form	Turner, Anna	Received
3	Notice of Exclusion & Officer's Affidavit	Turner, Anna	Received
4	Hearing notice	Hearings Office	Received
5	Statement of Rights	Hearings Office	Received
6	Mailing list	Hearings Office	Received

