



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

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HEARINGS OFFICER'S ORDER

TriMet vs. Elizabeth C. Gunter

CASE NO. 3100271
(TriMet Exclusion Number 147811)

HEARING DATE: July 29, 2010

APPEARANCES:

None

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. Elizabeth C. Gunter on July 14, 2010. The case was forwarded to the City of Portland Hearings Office on July 16, 2010. The Hearings Office mailed a hearing notice to the parties on July 20, 2010, within the time prescribed in the TriMet Code. The notice contained the required information concerning Ms. Gunter's rights in the hearing process.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Ms. Gunter 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. Gunter failed to appear at the hearing and did not submit a written request to the Hearings Officer to reschedule the hearing. Ms. Gunter did not contact the Hearings Office prior to the hearing via telephone, in person or fax; however, the Hearings Office did receive a call on July 20, 2010, from a gentleman representing himself as her father; and he was informed of the hearing date and time. Ms. Gunter did not present any evidence to contest the exclusion or the credibility/relevance of any evidence. No one appeared and testified on behalf of TriMet. The Hearings Officer makes this decision solely based upon 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 Kerri Oman issued the exclusion notice and briefly described the incident in Exhibit 3. Officer Oman wrote: "SB on platform smoking. Told SB, no smoking. SB put cigarette out on bench." Officer Kerri Oman issued the Notice of Exclusion to Ms. Gunter on July 14, 2010, for violating TriMet Code 28.15A, Prohibited Activities on District Transit System, specifically smoking (Exhibit 3). TriMet Code Section 28.15A(2), in pertinent part, prohibits a person from smoking tobacco or any other substance within any space or area where posted signage prohibits smoking.

The Hearings Officer finds, based on the report of Officer Oman, that Ms. Gunter was smoking. However, there is no evidence in the record to indicate that Ms. Gunter was in a space where posted signage prohibits smoking. Therefore, the Hearings Officer finds that the Notice of Exclusion issued to Ms. Gunter on July 14, 2010, is not valid.

ORDER AND DETERMINATION:

1. Validity of the Notice of Exclusion:

The Hearings Officer sets aside the Notice of Exclusion issued to Ms. Elizabeth C. Gunter on July 14, 2010.

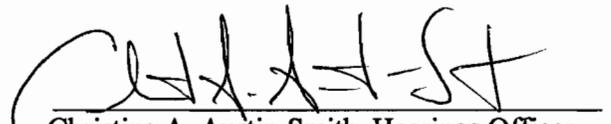
2. Length of the Exclusion:

The exclusion shall not become effective.

3. This order has been mailed to the parties on July 30, 2010, not more than five (5) business days following the hearing, and will become final on August 4, 2010.

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

Dated: July 30, 2010



Christina A. Austin-Smith, Hearings Officer

CAAS:rs

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Appeal form page 2	Turner, Anna	Received
2	TriMet Fare Inspection System printout	Turner, Anna	Received
3	Notice of Exclusion	Turner, Anna	Received
4	Mailing List	Turner, Anna	Received
5	Hearing Notice	Turner, Anna	Received
6	Statement of Rights	Turner, Anna	Received