



# CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

## Hearings Office

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## HEARINGS OFFICER'S ORDER

TriMet vs. Christopher L. Bowers

CASE NO. 3110542

(TriMet Exclusion Number 188644)

HEARING DATE: December 13, 2011

### APPEARANCES:

Inspector Larry Boltjes, on behalf of TriMet

Excluded party did not appear

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. Bowers on December 2, 2011. The case was forwarded to the City of Portland Hearings Office on December 6, 2011. The Hearings Office mailed a Notice of Hearing to the parties on December 7, 2011, within the time prescribed in the TriMet Code. The notice contained the required information concerning Mr. Bowers' rights in the hearing process.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Mr. Bowers 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. Bowers was sent a Notice of Hearing on December 7, 2011 (Exhibit 5). The Notice of Hearing informed Mr. Bowers of the date/time/place of his scheduled hearing (2:45 p.m. on December 13, 2011, at 1900 SW Fourth Avenue, Portland, Oregon). The Notice of Hearing also included instructions for requesting a postponement of the hearing and general hearing procedures. The Notice of Hearing was mailed to Mr. Bowers at the address provided by TriMet. Mr. Bowers did not contact the Hearings Office, prior to the scheduled hearing, to request a postponement. Mr.

Bowers did not appear at the scheduled hearing. TriMet Fare Inspector Boltjes appeared at the hearing and testified on behalf of TriMet. The Hearings Officer makes this decision based upon the testimony of Inspector Boltjes and the documents admitted into the evidentiary record (Exhibits 1 through and including 6).

Mr. Bowers received a Notice of Exclusion on December 2, 2011, 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. Also, a person violates TMC 29.15 (fare violation) if the person, upon request of a TriMet representative, fails to display for the representative's view, proof of purchase of a valid fare.

Inspector Boltjes testified that on December 2, 2011, while conducting routine fare checks at the Tuality Max Station, he contacted Mr. Bowers. Inspector Boltjes stated prior making contact with Mr. Bowers that Mr. Bowers had been riding a TriMet Max train. Inspector Boltjes stated that he asked Mr. Bowers to display his fare for riding the Max Train. Inspector Boltjes stated that Mr. Bowers presented a "youth fare." Inspector Boltjes stated that he asked Mr. Bowers for proof that he (Bowers) was qualified to purchase a "youth fare." Inspector Boltjes testified that a person purchasing a youth fare is required to have, in his/her possession, proof that he/she is qualified by age and/or student status. Inspector Boltjes stated that, after some delay, Mr. Bowers produced documentation that he (Bowers) was 19 years old; older that allowed for purchase of "youth fare." Inspector Boltjes stated Mr. Bowers had no documentation that he (Bowers) qualified for a "youth fare" on the basis of being a "student."

The Hearings Officer finds the testimony of Inspector Boltjes, as summarized above, to be credible and accurately reflect the events leading to the issuance of the Notice of Exclusion to Mr. Bowers on December 2, 2011. The Hearings Officer finds that it is more probable than not that on December 2, 2011, Mr. Bowers did not display for viewing by the TriMet representative, while riding a Max train outside of the fareless area, proof of purchase of a valid fare. The Hearings Officer finds it is more probable than not that Mr. Bowers, on December 2, 2011, did violate TMC 29.15 (fare violation). The Hearings Officer finds the Notice of Exclusion issued to Mr. Christopher L. Bowers on December 2, 2011 is valid.

Special Exceptions: The Hearings Officer finds there is no evidence in the record to suggest that Mr. Bowers 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. If Mr. Bowers believes that he is transit dependent or disabled he may submit, in writing to the Hearings Office, a request for a "Qualified Exclusion." A Qualified Exclusion permits a transit dependent person to utilize, on a limited basis, TriMet property and vehicles. To be considered for a Qualified Exclusion the writing submitted to the Hearings Office must include at least the following information:

- Why Mr. Bowers feels he is transit dependent (i.e. no driver's license, no family or friends available to drive you to your desired locations) or disabled
- Mr. Bowers' residence address
- Address for all locations that Mr. Bowers believes it is necessary for him to use TriMet
- Reasons trips are necessary (e.g., travel to and from medical and legal appointments, school or training classes, place(s) of employment, obtaining food, clothing and necessary household items, or for accessing any critical services)
- Days of week and time during the days when trips are expected to be made and the particular bus line or Max line #

The Hearings Officer will make a determination, based upon the information supplied, whether or not Mr. Bowers is transit dependent and which trips, if any, are trips of necessity.

**ORDER AND DETERMINATION:**

1. Validity of the Notice of Exclusion:

The Hearings Officer sustains the Notice of Exclusion issued to Mr. Christopher L. Bowers on December 2, 2011.

2. Length of the Exclusion:

The exclusion shall become effective with this Order, on December 23, 2011, and shall conclude on January 21, 2012, 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 December 14, 2011, not more than five (5) business days following the hearing, and will become final on December 23, 2011.

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

Dated: December 14, 2011



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 Gregory J. Frank, Hearings Officer

GJF: jeg

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 printout	Turner, Anna	Received
3	Notice of Exclusion	Turner, Anna	Received
4	Mailing List	Hearings Office	Received
5	Notice of Hearing	Hearings Office	Received
6	Statement of Rights	Hearings Office	Received