



CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

TriMet vs. Ryan D. Barlow

CASE NO. 3120099

(TriMet Exclusion Number 198015)

HEARING DATE: March 8, 2012

APPEARANCES:

Mr. Ryan Barlow, Excluded Party

TriMet did not appear

HEARINGS OFFICER: Ms. Kimberly M. Graves

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. Ryan D. Barlow on February 8, 2012. The case was forwarded to the City of Portland Hearings Office on February 21, 2012. The Hearings Office mailed a Notice of Hearing and Interim Order extending the stay on the exclusion to the parties on February 23, 2012, within the time prescribed in the TriMet Code. The notice contained the required information concerning Mr. Barlow's rights in the hearing process.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Mr. Barlow when he was excluded. The notice referenced the violating conduct/applicable code provision.

Stays: The exclusion was stayed on the Hearings Officer's direction on February 23, 2012.

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. A written report is in the record which is represented to have been prepared by the officer issuing the Notice of Exclusion. The officer's written report stated, in summary, that on February 8, 2012, Mr. Barlow was seen smoking a cigarette while standing on the platform at the Gateway Transit Center. The report indicates that a TriMet inspector attempted to get Mr. Barlow's attention, but Mr. Barlow failed to respond. The report indicates

that the TriMet inspector made contact with Mr. Barlow about his smoking, but Mr. Barlow walked away when the inspector attempted to write him a citation. The report indicates that Mr. Barlow was then contacted by a police officer who issued him an exclusion.

Mr. Barlow was issued a Notice of Exclusion on February 8, 2012, for allegedly violating TMC 28.15 A.(2) [Smoking]. A person violates TMC 28.15 A.(2) if the person smokes tobacco or any other substance, carries any lighted or smoldering substance, in any form on a TriMet Vehicle or within any space or area where posted signage prohibits smoking.

Mr. Barlow appeared at the hearing and stated that he was at the doctor's office earlier in the day on February 8, 2012, and that he was unable to hear out of one of his ears that day. Mr. Barlow stated that he was not ignoring the inspector, but instead was simply unable to hear the inspector. Mr. Barlow stated that he was told that he couldn't smoke on the platform, and the inspector then asked for his identification. Mr. Barlow stated that he used some foul language and walked off. Mr. Barlow stated that he was then contacted by an officer, who had not witnessed the exchanged with the inspector, and was issued an exclusion. Mr. Barlow stated that the no smoking signage at the Gateway Transit Center is not very good, and that there are only small signs near the ground and on some buildings/structures. Mr. Barlow stated that he did not know that he wasn't allowed to smoke on the platform, and that the TriMet Inspector was unprofessional during the contact. Exhibits 1 through, and including, 7 were received into the record without objection.

The Hearings Officer finds the written statement of the officer to be credible and to accurately reflect the events leading up to the issuance of the Notice of Exclusion to Mr. Barlow on February 8, 2012. The Hearings Officer finds it is more probable than not that on February 8, 2012, Mr. Barlow violated TMC 28.15A2 by carrying a lighted substance while on TriMet property. The Hearings Officer finds the Notice of Exclusion issued to Mr. Barlow on February 8, 2012, is valid.

Special Exceptions: The Hearings Officer finds there is sufficient evidence in the record to suggest that Mr. Barlow is transit dependent and needs access to TriMet during the term of his exclusion to get to and from work. Mr. Barlow shall be permitted Monday through Thursday between 9:00 a.m. and 12:00 a.m. (Midnight), and Saturday and Sunday between 5:00 a.m. and 11:00 p.m. to ride the following TriMet lines:

- Bus #14 between SE Foster/72nd and downtown Portland;
- Bus #17 between SE Holgate/72nd and downtown Portland;
- Bus #72 between SE 82nd/Insley and NE 82nd/MAX Overpass, and Red, Blue or Green line MAX train between the NE 82nd Ave MAX station and downtown Portland;
- The Red, Blue or Green line MAX train between the Gateway Transit Center and downtown Portland;
- The Red or Blue line MAX train between downtown Portland and the Beaverton Transit Center; and
- Buses #76 or 78 between the Beaverton Transit Center and SW Hall/Nimbus.

ORDER AND DETERMINATION:

1. Validity of the Notice of Exclusion:

The Hearings Officer modifies the Notice of Exclusion issued to Mr. Barlow on February 8, 2012.

2. Length of the Exclusion:

The exclusion shall become effective with this Order, on March 14, 2012, and shall conclude on April 13, 2012, at 5:00 p.m.

3. Scope of the Exclusion:

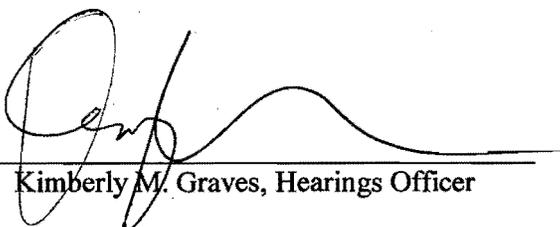
Mr. Barlow shall be permitted Monday through Thursday between 9:00 a.m. and 12:00 (midnight), and Saturday and Sunday between 5:00 a.m. and 11:00 p.m. to ride the following TriMet lines:

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- The Red, Blue or Green line MAX train between the Gateway Transit Center and downtown Portland;
- The Red or Blue line MAX train between downtown Portland and the Beaverton Transit Center; and
- Buses #76 or 78 between the Beaverton Transit Center and SW Hall/Nimbus.

4. This order has been mailed to the parties on March 9, 2012, not more than five (5) business days following the hearing, and will become final on March 14, 2012.

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

Dated: March 9, 2012



Kimberly M. Graves, Hearings Officer

KMG:rs

Enclosure

<u>Exhibit #</u>	<u>Description</u>	<u>Submitted by</u>	<u>Disposition</u>
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	Hearing Notice	Hearings Office	Received
6	Statement of Rights	Hearings Office	Received
7	3/8/12 letter from Albert Parker, Adelphi Consulting Group, Inc.	Barlow, Ryan D.	Received