



# CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

## Hearings Office

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## HEARINGS OFFICER'S ORDER

TriMet vs. Holly Jo Crary

CASE NO. 3120260

(TriMet Exclusion Number 163491)

HEARING DATE: June 7, 2012

### APPEARANCES:

Ms. Holly Jo Crary, Excluded Party

Officer Jeff Young, on behalf of TriMet

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 Ms. Holly Jo Crary on May 7, 2012. The case was forwarded to the City of Portland Hearings Office on May 15, 2012. The Hearings Office mailed a Notice of Hearing and Interim Order extending the stay on the exclusion to the parties on May 16, 2012, within the time prescribed in the TriMet Code. The notice contained the required information concerning Ms. Crary's rights in the hearing process.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Ms. Crary when she was excluded. The notice referenced the violating conduct/applicable code provision.

Stays: The exclusion was stayed on the Hearings Officer's direction on May 16, 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. Officer Young appeared and testified on behalf of TriMet. Officer Young testified that on May 7, 2012, at the Willow Creek Transit Center, he was asked by another officer to contact a female subject who was currently excluded from TriMet property. Officer Young testified that the subject was identified as Ms. Crary, and he contacted her near the bus area of the Willow Creek Transit Center. Officer Young testified that Ms. Crary was excluded from TriMet property from May 3, 2012 through June 1, 2012.

Ms. Crary received a Notice of Exclusion on May 7, 2012 for allegedly violating TMC 28.15C by engaging in conduct constituting the crime of Interfering with Public Transportation under ORS 166.116. TMC 28.15C states: "No person shall engage in activity prohibited by the criminal laws of any state, county, or municipality, in which the criminal incident occurs, while on a District Vehicle or in or upon a District Station or District Parking Facility."

A person violates ORS 166.116 if the person (1) knowingly enters or remains unlawfully in or on a public transit vehicle or public transit station.

Ms. Crary appeared at the hearing and stated that she received the initial exclusion when a man pushed her on TriMet. Ms. Crary stated that she did not agree with the officer's decision to issue her an exclusion. Ms. Crary testified that shortly after the exclusion was issued she was diagnosed with epilepsy. Ms. Crary stated that she forgot about the exclusion, given the stressful events taking place. Ms. Crary stated that she had forgotten about the exclusion when she went to the Willow Creek Transit Center on May 7, 2012, but that she remembered that she was excluded when she saw the officer on the platform. Exhibits 1 through, and including, 6 were received into the record without objection.

The Hearings Officer finds it is more probable than not that on May 7, 2012, Ms. Crary was subject to a TriMet exclusion prohibiting her from entering TriMet vehicles/stations. The Hearings Officer finds it more probable than not that Ms. Crary, while subject to a TriMet exclusion, did enter a TriMet MAX train. The Hearings Officer finds that it is more probable than not that on May 7, 2012, Ms. Crary did violate ORS 166.116. The Hearings Officer finds the Notice of Exclusion issued to Ms. Crary on May 7, 2012 is valid.

Special Exceptions: The Hearings Officer finds there is sufficient evidence in the record to suggest that Ms. Crary is disabled and needs access to TriMet to continue her volunteer employment and to attend necessary medical appointments. Ms. Crary shall be permitted Monday through Friday between 9:00 a.m. and 4:00 p.m. to ride the Blue line MAX train between the Willow Creek/SW 185<sup>th</sup> Avenue Transit Center and the NE 60<sup>th</sup> Avenue MAX station, and bus #19 between NE Glisan/60<sup>th</sup> and NE Glisan/52<sup>nd</sup>. Ms. Crary may travel on any day, on any TriMet line, to travel to and from necessary medical appointments, when carrying proof from her medical provider of the date and time for the appointment.

#### ORDER AND DETERMINATION:

1. Validity of the Notice of Exclusion:

The Hearings Officer modifies the Notice of Exclusion issued to Ms. Holly Jo Crary on May 7, 2012.

2. Length of the Exclusion:

The exclusion shall become effective with this Order, on June 13, 2012, and shall conclude on August 12, 2012.

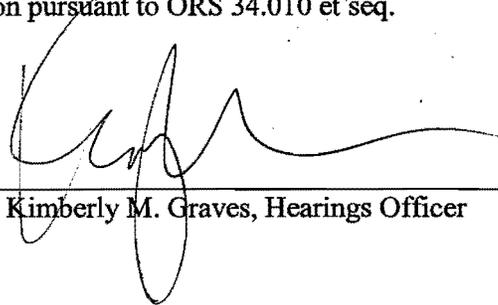
3. Scope of the Exclusion:

Ms. Crary shall be permitted Monday through Friday between 9:00 a.m. and 4:00 p.m. to ride the Blue line MAX train between the Willow Creek/SW 185<sup>th</sup> Avenue Transit Center and the NE 60<sup>th</sup> Avenue MAX station, and bus #19 between NE Glisan/60<sup>th</sup> and NE Glisan/52<sup>nd</sup>. Ms. Crary may travel on any day, on any TriMet line, to travel to and from necessary medical appointments, when carrying proof from her medical provider of the date and time for the appointment.

4. This order has been mailed to the parties on June 8, 2012, not more than five (5) business days following the hearing, and will become final on June 13, 2012.

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

Dated: June 8, 2012




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Kimberly M. Graves, Hearings Officer

KMG:c2/c1

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           |
| 7                | 5/8/12 letter                          | Crary, Holly Jo     | Received           |
| 8                | Next appointments                      | Crary, Holly Jo     | Received           |