



# CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

## Hearings Office

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## HEARINGS OFFICER'S ORDER

TriMet vs. Harry G. Hoops, Jr.

CASE NO. 3120213

(TriMet Exclusion Number 194737)

HEARING DATE: May 3, 2012

### APPEARANCES:

Mr. Harry Hoops, Excluded Party

Mr. Conrad Russell, 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 Mr. Harry G. Hoops, Jr. on April 10, 2012. The case was forwarded to the City of Portland Hearings Office on April 18, 2012. The Hearings Office mailed a Notice of Hearing and Interim Order extending the stay on the exclusion to the parties on April 18, 2012, within the time prescribed in the TriMet Code. The notice contained the required information concerning Mr. Hoops' rights in the hearing process.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Mr. Hoops 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 April 18, 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. Mr. Russell appeared and testified on behalf of TriMet. Mr. Russell testified that on April 10, 2012, he was conducting fare checks at the Gateway Transit Center when he observed Mr. Hoops cross over the trackway in an area posted with signage reading "Do Not Cross Trackway." Mr. Russell testified that when Mr. Hoops crossed the trackway there was a MAX train approaching which was approximately three city blocks away.

Mr. Hoops received a Notice of Exclusion on April 10, 2012, for allegedly violating TMC 28.15 D (4) (Interference/Trespass on Right-of-Way). A person violates TMC 28.15 D (4) (Interference/Trespass on Right-of-Way) if the person fails to obey a TriMet authorized posted directive or prohibition pertaining to entering, crossing or traveling upon the right-of-way.

Mr. Hoops appeared at the hearing and stated that what Mr. Russell said was true. Mr. Hoops stated that he did not see a train approaching, but he did cross the tracks. Exhibits 1 through, and including, 6 were received into the record without objection.

The Hearings Officer finds the testimony of the parties to be credible and to accurately reflect the events leading up to the issuance of the Notice of Exclusion to Mr. Hoops on April 10, 2012. The Hearings Officer finds it is more probable than not that on April 10, 2012, Mr. Hoops violated TMC 28.15D4 by failing to obey a TriMet authorized posted directive pertaining to entering, crossing or travelling upon the right-of-way. The Hearings Officer finds the Notice of Exclusion issued to Mr. Hoops on April 10, 2012, is valid.

Special Exceptions: The Hearings Officer finds there is sufficient evidence in the record to suggest that Mr. Hoops is transit dependent and needs access to TriMet to continue his employment. Mr. Hoops shall be permitted on Monday through Friday between 5:00 a.m. and 9:00 p.m. and weekends between 8:00 a.m. and 5:00 p.m. to ride the following TriMet lines:

- The Red line MAX train between the 82<sup>nd</sup> Avenue MAX platform and the Parkrose/Sumner Transit Center.
- The Yellow line MAX train between the Delta Park/Vanport MAX station and the Interstate/Rose Quarter MAX platform.
- The Red, Blue or Green line MAX train between the Rose Quarter Transit Center MAX platform and the 82<sup>nd</sup> Avenue MAX platform.
- Bus #77 between the Rose Quarter Transit Center and NE Halsey/74<sup>th</sup>.

On Saturday between 8:30 a.m. and 1:00 p.m. Mr. Hoops shall be permitted to ride the following TriMet lines:

- Bus #19 between NE Glisan/74<sup>th</sup> and downtown Portland.
- Bus #8 between downtown Portland and the US Veterans Hospital.

#### ORDER AND DETERMINATION:

##### 1. Validity of the Notice of Exclusion:

The Hearings Officer modifies the Notice of Exclusion issued to Mr. Harry G. Hoops, Jr. on April 10, 2012.

##### 2. Length of the Exclusion:

At the request of Mr. Russell, the Hearings Officer finds sufficient grounds exist to reduce the length of the exclusion from 90 days to 60 days. The exclusion shall become effective with this Order, on May 10, 2012, and shall conclude on July 9, 2012, at 5:00 p.m.

##### 3. Scope of the Exclusion:

Mr. Hoops shall be permitted on Monday through Friday between 5:00 a.m. and 9:00 p.m. and weekends between 8:00 a.m. and 5:00 p.m. to ride the following TriMet lines:

- The Red line MAX train between the 82<sup>nd</sup> Ave MAX platform and the Parkrose/Sumner Transit Center.
- The Yellow line MAX train between the Delta Park/Vanport MAX station and the Interstate/Rose Quarter MAX platform.
- The Red, Blue or Green line MAX train between the Rose Quarter Transit Center MAX platform and the 82<sup>nd</sup> Ave MAX platform.

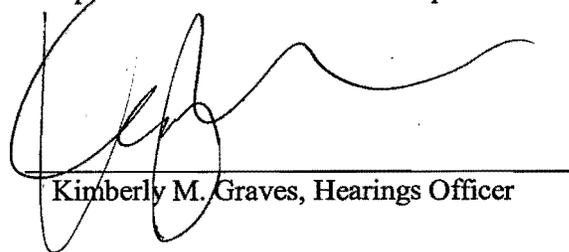
- Bus #77 between the Rose Quarter Transit Center and NE Halsey/74<sup>th</sup>.

On Saturday between 8:30 a.m. and 1:00 p.m. Mr. Hoops shall be permitted to ride the following TriMet lines:

- Bus #19 between NE Glisan/74<sup>th</sup> and downtown Portland.
- Bus #8 between downtown Portland and the US Veterans Hospital.

4. This order has been mailed to the parties on May 7, 2012, not more than five (5) business days following the hearing, and will become final on May 10, 2012.
5. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: May 7, 2012



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Kimberly M. Graves, Hearings Officer

KMG:jeg/cl

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