



# CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

## Hearings Office

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## HEARINGS OFFICER'S ORDER

TriMet vs. Sali Fores  
(AKA Salin Essex Fores, AKA Jeffrey Davis)

CASE NO. 3120369  
(TriMet Exclusion Number 163261)

HEARING DATE: July 26, 2012

### APPEARANCES:

Mr. Sali Fores, Excluded Party

Officer Anthony Cristofaro, 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. Sali Fores (AKA Mr. Salin Essex Fores, AKA Jeffrey Davis) on July 13, 2012. The case was forwarded to the City of Portland Hearings Office on July 17, 2012. The Hearings Office mailed a Notice of Hearing to the parties on July 18, 2012, within the time prescribed in the TriMet Code. The notice contained the required information concerning Mr. Fores' rights in the hearing process.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Mr. Fores when he 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. Officer Cristofaro appeared and testified on behalf of TriMet. Officer Cristofaro testified that on July 13, 2012, he was approached by Mr. Fores while at the Beaverton Transit Center. Officer Cristofaro testified that Mr. Fores was complaining to him about a child on the bus he was just riding. Officer Cristofaro testified that while he was talking with Mr. Fores, a bus driver approached him and told him that Mr. Fores had threatened

another passenger on the bus. Officer Cristofaro testified that the bus driver told him that Mr. Fores had threatened to "shoot" a child on the bus. Officer Cristofaro testified that he took Mr. Fores into custody and searched his person and property. Officer Cristofaro testified that Mr. Fores did not have any weapons. Officer Cristofaro testified that he was not able to contact the alleged victim because she had left the area. Officer Cristofaro testified that to his knowledge, the alleged victim did not report the contact with Mr. Fores to the police or TriMet at any time following the contact. Officer Cristofaro testified that Mr. Fores was not arrested and that he was released at the scene.

Mr. Fores was cited on July 13, 2012 with violating TMC 28.15D8-Threats. TMC 28.15D8 states that no person may utter a threat to cause damage to a District Vehicle or other District property, or state a threat to cause disruption to District operations through the use of a bomb, explosive, or any other destructive device or weapon, or release of any harmful substance, while on a District Vehicle or other District property; or state a threat of physical harm to a peace officer or District personnel or peace officers acting in the course of employment.

Mr. Fores appeared at the hearing and stated that he boarded the bus in Tigard and sat in a seat next to the "wheel well" just 2 seats from the front of the bus. Mr. Fores testified that the bus was mostly empty when he boarded. Mr. Fores testified that a few stops after he boarded, 2 women boarded who had young children with them. Mr. Fores testified that one of the children started kicking him in the leg, and that the mother did not take any action to stop the child. Mr. Fores testified that he told the woman that the kicking was hurting him, but that the woman again took no action to control her child. Mr. Fores testified that another passenger told him that the child "didn't mean it." Mr. Fores stated that in response he responded by saying that people frequently shoot guns into the air in celebration, and while they don't intend to hurt anyone, people are still hurt by their actions. Mr. Fores testified that after he made the analogy about shooting a gun, the driver indicated that "she heard me threaten someone." Mr. Fores testified that he told the driver that he didn't threaten anyone, and that the driver responded by saying that if she heard him threaten anyone again she would kick him off the bus. Mr. Fores testified that he turned away from the woman and her child and sat in silence for the rest of the bus ride. Mr. Fores testified that he was approximately half way through his ride when the contact with the driver occurred. Mr. Fores testified that the driver did not kick him off the bus, and that he completed his trip to the Beaverton Transit Center. Mr. Fores testified that the woman and her child exited the bus prior to the Beaverton Transit Center. Mr. Fores testified that he approached the officer at the Beaverton Transit Center to ask about how he should have dealt with the child on the bus. While he was talking with the officer, Mr. Fores testified, the bus driver approached and spoke with the officer in private. Mr. Fores testified that after the officer spoke with the bus driver, he was taken into custody briefly, and later released. Exhibits 1 through, and including, 8 were received into the record without objection.

The Hearings Officer finds the officer and Mr. Fores to be credible. The Hearings Officer finds that the officer is reporting information which was provided to him by the bus driver, and that the officer has no personal knowledge of the interaction which took place on the bus. The Hearings Officer notes that the alleged victim did not come forward and did not make any report to the police about the interaction. The Hearings Officer finds that the firsthand account of the interaction provided by Mr. Fores is the best evidence of what occurred on the bus. The Hearings Officer finds that the officer lacks the personal knowledge necessary to refute or contradict the testimony of Mr. Fores. The Hearings Officer finds that TriMet has failed to meet its burden because the bus driver and/or the alleged victim, both persons with firsthand knowledge, were not present at the hearing. The Hearings Officer finds that the Notice of Exclusion issued to Mr. Fores on July 13, 2012 is not valid.

#### ORDER AND DETERMINATION:

1. Validity of the Notice of Exclusion:

The Hearings Officer sets aside the Notice of Exclusion issued to Mr. Sali Fores (AKA Salin Essex Fores, AKA Jeffrey Davis) on July 13, 2012.

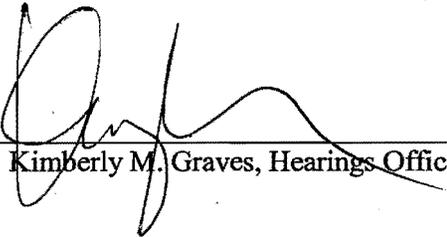
2. Length of the Exclusion:

The exclusion shall not become effective.

3. This order has been mailed to the parties on July 31, 2012, not more than five (5) business days following the hearing, and will become final on August 3, 2012.

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

Dated: July 31, 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	Statement	Fores, Salin Essex	Received
8	Statement	Fores, Salin Essex	Received