



# CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

## Hearings Office

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## HEARINGS OFFICER'S ORDER

TriMet vs. Ian Bannister

CASE NO. 3120374

(TriMet Exclusion Number 197079)

HEARING DATE: July 31, 2012

### APPEARANCES:

Mr. Ian Bannister, Excluded party

No one appeared 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. Bannister on July 18, 2012. The case was forwarded to the City of Portland Hearings Office on July 23, 2012. The Hearings Office mailed a Notice of Hearing to the parties on July 23, 2012, within the time prescribed in the TriMet Code. The notice contained the required information concerning Mr. Bannister's rights in the hearing process.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Mr. Bannister 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. 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:

"I was riding a EB train checking (illegible). Bannister gave me youth pass but had no (illegible) school ID. Bannister had (illegible) attitude about needing ID."

The report indicates that the contact with Mr. Bannister occurred on July 18, 2012.

Mr. Bannister received a Notice of Exclusion on July 18, 2012, 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 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.

Mr. Bannister appeared at the hearing and stated that his mother buys him his Youth tickets, and that he didn't know that he was supposed to carry identification with him to make the fare valid. Exhibits 1 through, and including, 6 were received into the record without objection.

The Hearings Officer finds the written statement from the TriMet representative and the statement of Mr. Bannister to be credible and accurately reflects the events leading to the issuance of the Notice of Exclusion to Mr. Bannister on July 18, 2012. The Hearings Officer finds that it is more probable than not that on July 18, 2012, Mr. Bannister 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. Bannister, on July 18, 2012, did violate TMC 29.15 (fare violation). The Hearings Officer finds the Notice of Exclusion issued to Mr. Bannister on July 18, 2012, is valid.

Special Exceptions: The Hearings Officer finds there is sufficient evidence in the record to suggest that Mr. Bannister is transit dependent and needs access to TriMet to travel between his residences. Mr. Bannister shall be permitted on Thursdays and Mondays between 12:00 p.m. (noon) and 4:00 p.m. to ride the Red Line MAX train between the Sunset Transit Center and the Willow Creek/SW 185<sup>th</sup> Ave MAX station.

#### ORDER AND DETERMINATION:

1. Validity of the Notice of Exclusion:

The Hearings Officer modifies the Notice of Exclusion issued to Mr. Bannister on July 18, 2012.

2. Length of the Exclusion:

The exclusion shall become effective with this Order, on August 10, 2012, and shall conclude on September 9, 2012.

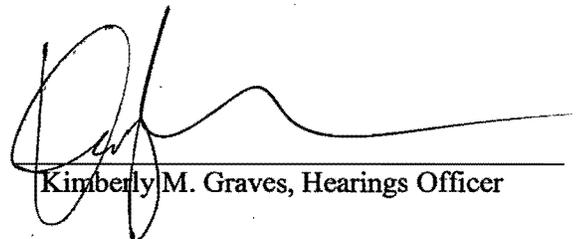
3. Scope of the Exclusion:

Mr. Bannister shall be permitted on Thursdays and Mondays between 12:00 p.m. (noon) and 4:00 p.m. to ride the Red Line MAX train between the Sunset Transit Center and the Willow Creek/SW 185<sup>th</sup> Ave MAX station.

4. This order has been mailed to the parties on August 2, 2012, not more than five (5) business days following the hearing, and will become final on August 10, 2012.

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

Dated: August 2, 2012



Kimberly M. Graves, Hearings Officer

KMG:c2

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