



# CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

## Hearings Office

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## HEARINGS OFFICER'S ORDER

TriMet vs. Alex T. Keppinger

CASE NO. 3130124

(TriMet Exclusion Number 176024)

HEARING DATE: March 19, 2013

### APPEARANCES:

Mr. Alex Keppinger, Excluded party

Supervisor Ryan Hughes, on behalf of TriMet

HEARINGS OFFICER: Gregory J. Frank

### 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. Alex T. Keppinger ("Keppinger") on March 5, 2013. The case was forwarded to the City of Portland Hearings Office on March 8, 2013. The Hearings Office mailed a Notice of Hearing to the parties on March 8, 2013, within the time prescribed in the TriMet Code. The notice contained the required information concerning Keppinger's rights in the hearing process.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Keppinger when he was excluded. The notice did reference 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: Keppinger appeared at the March 19, 2013 hearing (the "Hearing") and testified on his own behalf. TriMet Road Supervisor Hughes ("Hughes") appeared at the Hearing and testified on behalf of TriMet. The Hearings Officer makes this decision based upon the testimony of Keppinger and Hughes and the documents admitted into the evidentiary record (Exhibits 1 through and including 6).

Keppinger received a Notice of Exclusion on March 5, 2013 for allegedly violating TriMet Code ("TMC") 28.15 A (16). TMC 28.15 A(16) states that

"No person shall occupy, move about or engage in activity in a District Vehicle in a manner that:

- (a) Interferes with the free movement of passengers; or
- (b) Interferes with or disrupts the function or safe operation of the District Vehicle, including movement that constitutes a distraction of the operator of a District Vehicle; or
- (c) Uses a District Vehicle for any purpose other than for transportation."

Hughes testified that on March 5, 2013 he was aboard an eastbound Max train as it was about to depart the Beaverton Transit Center. Hughes stated that he observed Keppinger at a train doorway with his hands and feet appearing to be positioned to keep the doors from closing. Hughes stated that he asked Keppinger to allow the doors to close. Hughes stated that he observed the Max train operator attempt to close the doors and Keppinger's hands and feet kept the doors from closing. Hughes ordered Keppinger to allow the doors to close and when the doors started to close once again Keppinger held the doors open. Hughes stated that he then ordered Keppinger off of the Max train and issued him a Notice of Exclusion for violating TMC 28.15A(16)(b).

Keppinger testified that on March 5, 2013 he did hold Max train doors open. Keppinger stated that he and/or his uncle were going to be late for an appointment and that he was holding the doors open so that his uncle could board the train. Keppinger stated that Hughes testimony accurately reflected the events at the Beaverton Transit Center on March 5, 2013.

The Hearings Officer finds, based upon the evidence in the record, that on March 5, 2013 Keppinger did use his hand and/or foot to hold open TriMet doors even after being advised by Hughes not to do so. The Hearings Officer finds that holding TriMet Max train doors open does interfere and disrupt the operation of a Max train. The Hearings Officer finds that holding doors open, on March 5, 2013, created a safety risk to Keppinger and other Max train passengers. The Hearings Officer finds it is more probable than not that on March 5, 2013 Keppinger did violate TMC 28.15 A(16)(b). The Hearings Officer finds that the Notice of Exclusion issued to Mr. Alex T. Keppinger on March 5, 2013 is valid.

Special Exceptions: The Hearings Officer finds Keppinger is transit dependent. The Hearings Officer finds that Keppinger testified that he regularly rides Max trains to visit and hang-out with friends and family. The Hearings Officer, at this time, finds that Keppinger demonstrated no need to ride TriMet vehicles. The Hearings Officer informed Keppinger that if a need for him to ride TriMet vehicles would arise, during the term of the Notice of Exclusion, he could provide the Hearings Officer a written request for a qualified exclusion.

#### ORDER AND DETERMINATION:

1. Validity of the Notice of Exclusion:

The Hearings Officer sustains the Notice of Exclusion issued to Mr. Alex T. Keppinger on March 5, 2013.

2. Length of the Exclusion:

The exclusion shall become effective with this Order, on March 29, 2013, and shall conclude on April 26, 2013.

3. Scope of the Exclusion:

The scope of the exclusion shall be as described in the Notice of Exclusion.

4. This Order has been mailed to the parties on March 20, 2013, not more than five (5) business days following the hearing, and will become final on March 29, 2013.
5. This Order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.



Dated: March 20, 2013

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Gregory J. Frank, Hearings Officer

GF:c1/m2

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	Hearing Notice	Hearings Office	Received
6	Statement of Rights	Hearings Office	Received