

**Date:** August 9, 2017

**To:** Board of Directors

**From:** Neil McFarlane *Neil McFarlane*

**Subject:** **ORDINANCE NO. 346 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) AMENDING TRIMET CODE CHAPTER 28 CONCERNING LONG TERM EXCLUSIONS FROM THE TRIMET SYSTEM (SECOND READING)**

---

**1. Purpose of Item**

Ordinance 346 proposes that the TriMet Board of Directors (Board) adopt changes to TriMet Code Chapter 28.18 to permit long-term exclusions of serious violent offenders from the TriMet system.

**2. Type of Agenda Item**

- Initial Contract
- Contract Modification
- Other: Ordinance

**3. Reason for Board Action**

The TriMet Code may be amended only by adoption of an ordinance.

**4. Type of Action**

- Resolution
- Ordinance 1<sup>st</sup> Reading
- Ordinance 2<sup>nd</sup> Reading
- Other \_\_\_\_\_

**5. Background**

Currently, TriMet may exclude an individual from the system for a maximum of six months for a violation of the TriMet Code or state law. For the safety of TriMet employees and passengers, Ordinance 346 adds longer exclusions up to and including permanent exclusions for the rare violent offenses that may occur on the TriMet system. It also amends the administrative review process to provide the right to periodic review of any such exclusion longer than one year.

**A. Proposed Changes to Length of Exclusions:**

The proposed authority to issue long-term exclusions from the TriMet system is limited to instances when someone commits a serious physical offense against another person on the TriMet system. In such circumstances, the General Manager would be authorized to issue

an exclusion in excess of 6 months if the General Manager determines, based on a preponderance of the evidence, that the individual committed a physical offense against another person that is categorized as a felony under Oregon law. The length of time of the exclusion would depend on the specific facts, but would be based on the following criteria:

- First offense: Exclusion of more than six months and up to one year.
- Second Offense: Exclusion of more than one year and up to and including a permanent exclusion.

The General Manager retains the discretion to issue an exclusion longer than one year—including a permanent exclusion—after a single offense where the individual poses a serious threat to TriMet employees and passengers. An individual poses a serious threat if the person “committed a sexual assault, committed an assault that resulted in serious injury or death, or used a weapon to injure another person” on the TriMet system. The proposed changes also make explicit that the General Manager may revoke the automatic 10-day stay period immediately following issuance of an exclusion when the individual poses a serious threat.

#### **B. Proposed Changes to the Administrative Hearing Process**

Any individual excluded for more than one year has the right to periodic review of the exclusion before a Hearings Officer once every twelve months. The Hearings Officer who performs the review may amend or rescind the exclusion based on specified factors, including evidence that the individual no longer poses a threat to customers and staff. The Hearings Officer may consider evidence provided by the excluded individual, as well as any other evidence that the Hearing’s Officer finds is relevant. Ordinance 346 also requires that TriMet contact any known victims to allow the victim to make a statement concerning the request to modify the exclusion.

The complete proposed changes can be found in Exhibit A to the Ordinance. Exhibit A reflects amendments to the Ordinance as approved by the Board at its July 26 meeting.

#### **6. Financial/Budget Impact**

There should be no financial or budget impact.

#### **7. Impact if Not Approved**

The Board may choose to not conduct a second reading for Ordinance 346 at its August 9, 2017, meeting and not approve Ordinance 346. This option would not allow TriMet to issue long-term exclusions to serious violent offenders.

**ORDINANCE NO. 346**

**ORDINANCE OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) AMENDING TRIMET CODE CHAPTER 28 CONCERNING LONG TERM EXCLUSIONS FROM THE TRIMET SYSTEM**

THE BOARD OF DIRECTORS OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET), pursuant to the authority granted to it under Oregon Revised Statutes Chapter 267, does hereby ordain and decree the following ordinance:

**Section 1- Amendment of TriMet Code Chapter 28**

TriMet Code Chapter 28 is amended to make the changes as set forth in attached Exhibit A.

**Section 2- Effective/Operative Dates**

This Ordinance shall take effect thirty days after the date of its adoption.

Dated: August 9, 2017

Attest:

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
Presiding Officer

Approved as to Legal Sufficiency:

  
\_\_\_\_\_  
Legal Department

**ORDINANCE NO. 346  
EXHIBIT A**

TriMet Code (TMC) Chapter 28, Section 28.18 Exclusion, is amended as set forth below. Deletions are shown in brackets with a line through the text, and additions are shown in underlined, bold text.

**CHAPTER 28 – REGULATIONS GOVERNING CONDUCT ON DISTRICT PROPERTY**

*Unchanged sections of the chapter omitted for brevity, indicated by a set of three asterisks (\*\*\*)*

\*\*\*

**28.18 Exclusion**

A. In addition to other measures provided for violation of TMC Chapters 28, 29, and 30, or the laws of the State of Oregon, the District may exclude an individual from all or any part of the District Transit System for a violation of any provision of TMC Chapters 28, 29 or 30, or a violation of any criminal law of the State of Oregon while on the District Transit System, for a period of time not to exceed six months.

1. **Notwithstanding the six month maximum exclusion in TMC 28.18(A), the General Manager may issue an exclusion in excess of six months to any person that the General Manager finds, based on a preponderance of the evidence, committed a serious physical offense against another person while the offender was on the District Transit System. A serious physical offense is one that is classified as a felony against another person under Oregon law. The exclusion period shall be determined on a case-by-case basis, but will be based upon the following criteria:**
  - i. **First Offense – Exclusion period of more than six months up to and including one year.**
  - ii. **Second Offense – Exclusion period of more than one year up to and including a permanent exclusion.**
2. **The General Manager may issue an exclusion in excess of one year for the first offense where a particular individual poses an immediate and serious threat to the safety of TriMet riders and employees. An individual poses an immediate and serious threat when he or she has committed a sexual assault, committed an assault that resulted in serious injury or death, or used a weapon to injure another person while the offender is on the District Transit System.**
3. **Exclusions issued by the General Manager under TMC 28.18(A)(1)-(2) shall include the information required by TMC 28.18(E).**

\*\*\*

**C. Except for those exclusions issued by the General Manager as authorized by TMC 28.18(A)(1)-(2) a [A] notice of exclusion may be issued by any peace officer, Inspector, District Road Supervisor, District Rail Controller/Supervisor, or other person authorized by the General Manager (hereinafter referred to under this Section 28.18 as “exclusion officer”) based upon probable cause that an individual has engaged in conduct in violation of TMC Chapters 28, 29 or 30, in violation of any law of the State of Oregon, or in violation of the criminal law of a municipality in which the conduct occurred.**

\*\*\*

**G. All exclusions shall be subject to a stay pending administrative review and opportunity for a hearing. A stay on an exclusion shall remain in effect through the tenth (10<sup>th</sup>) business day following the issuance of the Notice of Exclusion or, if a hearing has been requested, until the date on which the Hearing Officer’s final order is effective following a hearing. The General Manager may revoke the 10-day stay should a particular individual pose an immediate and serious threat to the safety of TriMet riders and employees.**

\*\*\*

**I. Effect of a Failure to Schedule or Attend a Hearing. If a Notice of Exclusion is deemed valid by the Exclusion Administrator, and an excluded person fails to schedule a hearing or appear at a scheduled hearing, the exclusion shall automatically take effect on the eleventh (11<sup>th</sup>) business day following the issuance of the Notice of Exclusion, in accordance with the terms of the Notice of Exclusion. If the General Manager chooses to revoke the 10-day stay because an individual poses an immediate and serious threat, the exclusion shall go into effect immediately.**

\*\*\*

**O. In addition to the initial review of an exclusion as provided by TMC 28.18, if a person receives an exclusion of more than one year pursuant to TMC 28.18(A)(1)-(2), that person shall have the right to review by a Hearings Officer as provided in this section.**

- 1. Twelve months after the effective date of the exclusion, and once every twelve months thereafter as applicable, an excluded person may request a hearing to request a modification of the exclusion. The excluded party may submit evidence to a Hearings Officer which shows any or all the following:**
  - (a) Participation in a rehabilitation or other program that tends to reduce recidivism.**
  - (b) A lack of criminal activity or conduct since the date of exclusion.**

(c) Relevant information or evidence regarding the criminal proceedings related to the offense at issue.

(d) Other evidence that tends to show that the individual no longer poses a threat to TriMet passengers and employees.

2. The Exclusion Administrator will make reasonable efforts to notify any victim of the excluded individual's request for review. The victim will be allowed to testify or submit a written statement for the Hearings Officer's consideration, so long as the victim submits such a statement before the hearing date.
3. The Hearings Officer may consider the evidence provided by an excluded individual as set forth in TMC 28.18(O)(1). The Hearings Officer may also consider any other evidence which the Hearings Officer considers relevant under TMC 28.18(J), including but not limited to:
  - (a) The criminal record of the excluded individual.
  - (b) The seriousness of the violation for which the individual was excluded.
  - (c) Any statement or evidence presented by any victim of the excluded individual's offense.
  - (d) TriMet's evidence, such as video surveillance footage or statements made by TriMet employees concerning the excluded individual's behavior on the TriMet system from the incident giving rise to the exclusion.
4. Individuals who have been excluded for violent offenses as authorized by TMC 28.18(A)(1)-(2) shall not be entitled to a qualified exclusion under TMC 28.18(K).
5. The hearing shall be held within 30-days of the request for hearing unless the Hearings Officer determines that an extension is appropriate for good cause shown. The hearing will be conducted using the procedures and rules established in TMC 28.18(J) and any relevant Administrative Rules promulgated by the General Manager. Notwithstanding TMC 28.18(M), within 30 days of the conclusion of the hearing, the Hearings Officer shall issue a final order stating whether it is more probable than not that the individual continues to pose a serious threat to the safety of TriMet passengers and employees. The final order shall set forth all findings and a decision on the exclusion.
6. If the Hearings Officer finds that it is more probable than not that the individual no longer poses a risk to TriMet employees and passengers, the Hearings Officer may remove the exclusion in its entirety, shorten the length of

**the exclusion, modify the exclusion, or impose conditions for a qualified exclusion. This decision will be set forth in the final order.**

7. **Nothing in this section limits the General Manager's authority to modify, invalidate, or rescind an exclusion as provided under the Code or any rules promulgated thereunder.**

\*\*\*