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| LIFT Policy | |
| Title: Passenger Behavior & Conduct | ATP-001 |
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1.0 Purpose:

Outlined here is TriMet’s administrative process for sanctioning ADA-eligible passengers who engage in violent, seriously disruptive or illegal conduct (“conduct offenses”) while using TriMet LIFT service, and/or who pose a significant risk to others (“direct threat”). TriMet’s is entitled to refuse service to such passengers according to the regulations listed below:

“...an entity may refuse service to someone who engages in violent, seriously disruptive, or illegal conduct. If an entity may legitimately refuse service to someone, it may condition service to him(/her) on actions that would mitigate the problem. The entity could require an attendant as a condition of providing service it otherwise had the right to refuse.” [49CFR 37.5 App. D]

“...a person who poses a significant risk to others may be excluded [from service] if reasonable modifications to the public accommodation’s policies, practices, or procedures will not eliminate that risk.” [28CFR 36.208]

2.0 Definitions

Conduct offenses prohibited under these headings includes:

- Destruction of public property (the vehicle, and/or its furnishings; TriMet facilities)
- Being violent to others or to oneself
- Behavior that is seriously unruly, seriously disruptive, threatening, or frightening to others
- Behavior that interferes with the safe operation of the vehicle
- Violating TriMet’s service animal policy
- Violating TriMet rules governing the provision of transportation service system-wide
- Engaging in illegal conduct
- Other conduct judged by TriMet to represent an actual or potential threat to the health, safety or wellbeing of oneself, the operator, other passengers, and/or TriMet personnel

“Direct threat” is defined by Federal regulations as posing a “significant risk to others”. This includes both **safety issues** and **highly infectious diseases or conditions** such as Tuberculosis (TB), when and if “reasonable modifications to ... policies, practices or procedures will not eliminate ... risk.”

Regarding **involuntary non-violent behavior that is disability-related and which does not pose a direct threat** (such as involuntary verbal outbursts), U. S. Department of Transportation ADA Regulations state in 49 CFR Sec. 37.5(h) (“Nondiscrimination”): *It is not discrimination under this part for an entity to refuse to provide service to an individual with disabilities because that individual engages in violent, seriously disruptive, or illegal conduct. However, an entity shall not refuse to provide service to an individual with disabilities solely because the individual's disability results in appearance or involuntary behavior that may offend, annoy, or inconvenience employees of the entity or other persons. The*

Preamble to 49 CFR Sec. 37.125(h) states an important reminder: *...it is only in very few and compelling situations that an entity is entitled to refuse service to an otherwise eligible person....*

With regard to “direct threat,” U. S. Department of Justice regulations state in 28 CFR Sec. 36.208b: *In determining whether an individual poses a direct threat to the health or safety of others, a public accommodation must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk.*

3.0 Regulatory Basis

- A. **ADA Passengers:** US Department of Justice and US Department of Transportation FTA regulations as cited above.
- B. **Agency Passengers:** Decisions about refusing service to customers whose trips are funded by Oregon Department of Human Services (DHS) (also referred to as “Agency” customers) are left to the Service Quality Administrator’s discretion.
- C. **Application:** This policy applies to ADA, Agency, and General Public riders (who may be traveling as Personal Care Attendants or Companions of ADA or Agency riders).

4.0 Responsibilities

- A. **Only TriMet has the right to suspend service or impose sanctions on passengers.** Contractors are required to protect agency vehicles and property, document all incidents, and report these *promptly* to TriMet. Contractors are prohibited from taking formal or informal action to sanction any passenger.
- B. **TriMet is responsible for recording all incidents.**
- C. Contractor and TriMet staff must be mindful of the **critical importance of maintaining confidentiality** concerning information about passengers’ identity, personal circumstances, disability status, etc.

5.0 “Due Process” Requirement

In suspending or cancelling service, TriMet LIFT’s **Service Suspension and Appeals Procedure** and process must be followed. TriMet must provide administrative due process to the customer, as follows:

- A. Adequate documentation must be present to support the decision that a cause for suspension has been identified, carefully investigated, and that action is warranted.
- B. If sanctions are imposed, TriMet will follow established procedure(s) to notify the rider.
 - **If an immediate sanction is imposed,** a verbal notification must be swiftly followed by the required written or accessible format notice.
- C. The notice must identify the basis for the proposed action with specifics and describe the proposed sanction. It must notify the customer of his/her right to an administrative review and/or appeal and how to request each.
- D. Decisions must be subject to appeal in a hearing before the Independent Appeals Board. The Board’s decision is final and binding. In that hearing:
 - The passenger has the right to present written and oral information and arguments.
 - The passenger has the right to representation or to bring a supporting person.

- Relevant records and personnel must be made available to the passenger.
- Other persons can testify.

6.0 Mandatory Administrative Progression in Addressing Conduct Offenses and Direct Threats:

A. Severity of Incident:

- (1) **Level One Offenses:** This category principally includes conduct that interferes with the safe operation of a vehicle or conduct offenses that do not threaten others.

Level One Minor Offenses

- Fare evasion or fare non-payment related incident
- Pattern of “No Show” (or repeated late cancellation) of requested ride (for rider, Personal Care Attendant (PCA), or companion)
- Use of alcohol or other illicit substance
- Equipment tampering (removing fish eye lens, interfering with lift mechanisms and equipment, heaters, etc.)
- Threatening/abusive telephone calls; intentionally tying up telephone lines
- Fraudulent use of paratransit service:
 - ▶ Using another individual’s ID number/account
 - ▶ Requesting/Cancelling trips for another rider without authority
 - ▶ Providing false information for the purpose of obtaining service

Level One Major Offenses

Interfering with the safe operation of the vehicle; **Examples** include but **are not limited to:**

- Disruptive behavior (ex. yelling, throwing items, banging on windows, etc.)
- Actions which impede or deny other passenger’s access to service
- For “Unattended Passengers”, having no one to receive the passenger at the designated time and location of drop off.
- Removing or damaging seat belt or mobility device securement straps; leaving seat, falling out of mobility device
- Loud, abusive language; loud music
- Littering, creating an unsanitary environmental condition
- Smoking, having an open flame
- Failure to follow direction of operator
- Permanent damage to any on-board equipment with a cost to repair or replace
- Other unsafe conduct (determined at TRIMET’s discretion)

- (2) **Level Two Offenses:** This category principally includes circumstances representing a direct threat and may result in immediate refusal of paratransit service and a period of service suspension.

Conduct that threatens the safety or wellbeing of others includes but is not limited to:

- Assault of Operator or other passenger(s)
- Physical aggression or intimidation
- Verbal or sexual harassment
- Serious health-related conditions or conduct impacting public health
 - ▶ **Examples** include but **are not limited to** bed bugs, TB or other contagious conditions, spitting, urinating/defecating, discharge of bodily fluids, open wounds
- Failure to maintain control of a service animal

- Vandalism/Destruction or damage to property
- Unauthorized operation (or attempt to operate) a TriMet vehicle
- Serious infractions of TriMet operating rules
- Any criminal conduct

B. Required TriMet/Contractor Responses; Penalties

Level One Response:

- Contractor response:
 - ▶ Contractor/Operator must report incident to LIFT Dispatch immediately
 - ▶ LIFT Dispatch will document disruption and notify LIFT Customer Service and LIFT Service Quality Administrator (SQA).
 - ▶ Under guidance from SQA, Customer Service Representative will issue **warning** letter for first offenses.
 - ▶ For second or subsequent offenses, see TriMet response below.
- TRIMET response
 - ▶ For Second or subsequent Level One responses - Service Quality Administrator informs passenger of infraction and notifies if future trips are being suspended;
 - ▶ Service Quality Administrator records incident in passenger's file;
 - ▶ Upon second or subsequent offense within 1 rolling year, Service Quality Administrator issues letter informing passenger of subsequent violation and issues suspension letter, when germane to do so.

Penalties for Level One (MINOR) Offenses

- 1st offense: LIFT Customer Service representative issues warning notification letter notifying passenger of incident and advising of TriMet policy and informing that if another incident occurs, sanctions will be imposed as follows:
- 2nd offense (within 1 rolling year): 7 day Suspension (subject to TriMet's Service Suspension and Appeals Procedure). Level One Minor Offenses *may* also carry a requirement for a PCA (See section 7.0 for details) to travel with the rider until a pattern of safe/appropriate behavior can be demonstrated. Service Quality Administrator issues suspension letter notifying passenger of incident, advising of TriMet policy and informing of the dates of service suspension and condition(s) for service reinstatement.
- 3rd offense (within 1 rolling year): 14 day Suspension (subject to TriMet's Service Suspension and Appeals Procedure) Level One Minor Offenses *may* also carry a requirement for a PCA (See section 7.0 for details) to travel with the rider until a pattern of safe/appropriate behavior can be demonstrated. Service Quality Administrator issues suspension letter notifying passenger of incident, advising of TriMet policy and informing of the dates of service suspension and condition(s) for service reinstatement.
- Subsequent offenses (within 1 rolling year): 30 day Suspension (subject to TriMet's Service Suspension and Appeals Procedure); further suspensions up to and including refusal of service will be determined at the exclusive discretion of Director of Accessible Transportation Programs and/or their designee. Service Quality Administrator issues suspension letter notifying passenger of incident, advising of TriMet policy and informing of the dates of service suspension and condition(s) for service reinstatement.

Penalties for Level One (MAJOR) Offenses

- 1st offense: 7 day Suspension (subject to TriMet's Service Suspension and Appeals Procedure). Service Quality Administrator issues suspension letter notifying passenger of incident, advising of TriMet policy and informing of the dates of service suspension and condition(s) for service reinstatement.
- 2nd offense (within 1 rolling year): 14 day Suspension (subject to TriMet's Service Suspension and Appeals Procedure). 2nd offense within one rolling year may also carry a requirement for a PCA (See section 7.0 for details) depending on the severity and frequency of the behavior, to travel with the rider until a pattern of safe/appropriate behavior can be demonstrated. Service Quality Administrator issues suspension letter notifying passenger of incident, advising of TriMet policy and informing of the dates of service suspension and condition(s) for service reinstatement.
- 3rd offense (within 1 rolling year): 30 day Suspension (subject to TriMet's Service Suspension and Appeals Procedure); 3rd offense within one rolling year may also carry a requirement for a PCA, depending on the severity and frequency of the behavior, (See section 7.0 for details) to travel with the rider until a pattern of safe/appropriate behavior can be demonstrated. Service Quality Administrator issues suspension letter notifying passenger of incident, advising of TriMet policy and informing of the dates of service suspension and condition(s) for service reinstatement.
- Subsequent offenses (within 1 rolling year): further suspensions up to and including refusal of service will be determined at the exclusive discretion of Director of Accessible Transportation Programs and/or their designee. Service Quality Administrator issues suspension letter notifying passenger of incident, advising of TriMet policy and informing of the dates of service refusal or suspension and condition(s) for service reinstatement, if applicable.

Level Two Response:

- Contractor response:
 - ▶ Contractor/Operator must report incident to LIFT Dispatch immediately
 - ▶ LIFT Dispatch will document incident and notify LIFT Customer Service and LIFT Service Quality Administrator (SQA).
- TRIMET response
 - ▶ Service Quality Administrator informs passenger of violation and notifies that future trips are being suspended immediately.
 - ▶ Service Quality Administrator records incident; issues letter informing passenger of violation and penalty.

Penalties for Level Two Offenses

- Level Two Offenses will result in immediate service suspension; offenders may be subject to additional suspension, pursuant to the timelines listed below, up to and including permanent service refusal.
- Cases of infectious disease or other health related conduct will result in suspension until documentation attests that contagion is no longer a risk.
- Immediate suspensions to be issued as follows:
 - ▶ 1st offense: 14 day service suspension (subject to appeal)

- ▶ 2nd offense (within 1 rolling year): 30 day service suspension (subject to appeal) and PCA required upon service resumption to travel with the rider until a pattern of safe/appropriate behavior can be demonstrated.
- ▶ Subsequent offenses (within 1 rolling year): Further suspensions (90 day) up to and including refusal of service will be determined at the exclusive discretion of Director of Accessible Transportation Programs and/or their designee. PCA required if/when service resumes.

7.0 Contingency to refusal of service

Under Department of Transportation (DOT) Americans with Disabilities Act (ADA) regulations at 49 C.F.R. Section 37.5(e), a transit entity is prohibited from requiring that an individual with disabilities be accompanied by a personal care attendant (PCA). Transit entities are also not required to provide PCA services. This provision must be considered in light of the fact that under 49 C.F.R. 37.5(h), an entity may refuse service to someone who engages in violent, seriously disruptive, or illegal conduct. If an entity may legitimately refuse service to someone, it may condition service to him on actions that would mitigate the problem. The entity could require a PCA as a condition of providing service it otherwise had the right to refuse.

- A. In the case of subsequent and repeated offenses, TriMet may offer continued service provided the individual be accompanied by a Personal Care Attendant. This offer is a contingency to lengthy suspension or refusal of service if such a remedy will mitigate future conduct violations.
 - Contingency to be offered in letter informing passenger of penalty
 - Contingency may not be offered if presence of an attendant cannot reasonably eliminate risk of recurrence.
- B. If it has been determined that a passenger may be refused transportation and passenger has accepted and agreed to service contingent upon conditions set by TriMet, TriMet will not transport passenger when they are not accompanied by a Personal Care Attendant. If an operator arrives to perform a trip reserved with a mandatory PCA, and the PCA is not present to attend to the rider during the trip, the trip will be refused by the operator at the door.
- C. Offer of contingency and conditions of service provision may be reviewed when TriMet receives adequate documentation that effective steps have been taken to mitigate further conduct violations.
 - TriMet will permit passenger to resume travel without Personal Care Attendant upon receipt of satisfactory proof of action taken and sustained efficacy of action.
 - Further conduct incidents will result in refusal of service, pursuant to the penalty schedules listed above, based on the type of infraction.

8.0 Conduct offenses by Personal Care Attendants or Companions

Per 49 CFR 37.5 (h), in the case of a customer with an aggressive, threatening, or disruptive Personal Care Attendant or companion (all offenses identified previously in Level One and Level Two), Federal regulations permit the following:

- A. Denial of transportation to offending party should they seek to accompany eligible passenger on a TriMet vehicle as a companion or PCA.
 - Eligible passenger must be given advanced written notice indicating party is not permitted to accompany them on TriMet vehicles due to the specified actions by him/her.