

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

*(Title amended by Ordinance No. 168, Section 2)*

28.05 **Purpose.** For the safety, convenience, and comfort of District Vehicle passengers, and for the safety of District personnel and the region, and for the preservation of service quality in pursuit of the District's duty to provide a cost-effective source of reliable transportation, and to prevent system security vulnerabilities, it is necessary to establish rules and regulations governing conduct on District property.

*(28.05 amended by Ordinance No. 168, Section 3; Ordinance No. 275 and Ordinance No. 278)*

28.10 **Definitions.** As used in this Chapter, unless the context requires otherwise:

A. "Bicycle" means a device that:

- (1) Is designed to be operated on the ground on wheels;
- (2) Has a seat or saddle for use of the rider;
- (3) Is designed to travel with not more than three wheels in contact with the ground; and
- (4) Is (a) propelled exclusively by human power, or (b) has both fully operative pedals for human propulsion and an electric motor that: (i) has a power output of not more than 1,000 watts; and (ii) is incapable of propelling the device at a speed of greater than 20 miles per hour on level ground.

B. "District" means Tri-County Metropolitan Transportation District of Oregon.

C. "District Parking Facility" includes a District-operated parking lot, parking garage and park-and-ride lot and adjoining walkways.

D. "District Station" includes a "transit station", "transit center", bus passenger shelter and awnings, and a light rail or commuter rail passenger platform including shelters, awnings, adjoining stairways, ramps and elevators.

E. "District Transit System" means the property, equipment and improvements of whatever nature owned, leased, maintained, controlled or operated by the District to provide mass transportation for passengers or to provide for the movement of people, and includes any District Vehicle, District Station, District Parking Facility, District light rail or commuter rail trackway and District right-of-way, the Tilikum Crossing Bridge and the Lafayette Pedestrian Bridge.

F. "District Vehicle" includes a bus, van, light rail, commuter rail or other vehicle used to transport passengers and owned or operated by or on behalf of the District.

G. "Emergency" means an on-board District Vehicle fire, any incident that presents the risk of actual or threatened serious physical injury to persons, any apparently urgent medical need, or any other circumstance in which the General Manager has declared a state of emergency.

- H. "Exclusion" means a sanction administered to an individual for violation of TMC Chapters 28, 29 or 30. An exclusion prohibits that individual from entering or remaining on or in the District Transit System in whole or in part, for a specified duration.
- I. "Exclusion Administrator" includes any person(s) designated by the General Manager to conduct an internal agency administrative review of exclusion notices.
- J. "Hearings Officer" includes any person designated by the General Manager to conduct exclusion hearings.
- K. "Inspector" means a person other than a "peace officer" authorized by the General Manager or by the provisions of TMC Chapters 28, 29 or 30 to demand proof of fare payment and to issue citations as provided hereunder.
- L. "Interdiction Command" means an oral or written directive by a peace officer, TriMet Transportation Division enforcement personnel, including fare inspectors and field supervisors, or any other person authorized in writing by the General Manager, issued to a person violating the TriMet Code, in order to address a safety threat to persons upon the District Transit System or in response to conduct that disrupts the order and security of the District Transit System, that directs a person to depart a TriMet location or District Vehicle and avoid reentry or directs that an individual avoid contact or communication with an identified TriMet employee or contractor for a temporary period as prescribed by Administrative Rules promulgated by the General Manager.
- M. "Lafayette Pedestrian Bridge" means the pedestrian overpass structure from the intersection of S.E. Rhine Street and the Union Pacific right-of-way, passing over the Union Pacific right-of-way, to the intersection of S.E. Lafayette Street and the Union Pacific right-of-way.
- N. "Low-floor light rail vehicle" means a District Vehicle which is a light rail vehicle for which passenger entry is made at the passenger platform level without steps, either with or without a bridgeplate.
- O. "Meter" includes a pay station or other meter device used for payment for parking, unless otherwise specifically provided.
- P. "Peace Officer" includes a TriMet police officer, sheriff, constable, marshal, municipal police officer, member of the Oregon State Police or investigator of the Criminal Justice Division of the Oregon Department of Justice, and such other persons as may be designated by law.
- Q. "Qualified Exclusion" means an exclusion which excludes a person from use of the District Transit System except for use for travel to and from medical and legal appointments, school or training classes, places of employment, obtaining food, clothing and necessary household items, or for accessing any critical services.
- R. "Service Animal" means any guide dog, signal dog, or other animal individually trained to work or perform tasks for an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or

sounds, pulling a wheelchair, or fetching dropped items. An animal which provides solely emotional support, well-being, comfort, or companionship is not a service animal.

- S. "Tilikum Crossing Bridge" means Tilikum Crossing, *Bridge of the People*, which is TriMet's bridge over the Willamette River between the east right-of-way line of S.W. Moody Street on the west side of the Willamette River and the west right-of-way line of S.E. Water Avenue on the east side of the Willamette River, which is restricted to District Vehicles, streetcars, bicyclists and pedestrians; private vehicles are not permitted.
- T. "Transit Dependent" means a person who has no independent source of transportation and relies solely on public transit for local movement and access.

*(28.10 amended by Ordinance No. 168, Section 4; Ordinance No. 170, Section 1; Ordinance No. 179, Section 1; Ordinance No. 182, Section 1; Ordinance No. 189, Section 1; Ordinance No. 217, Section 1; Ordinance No. 223, Section 1; Ordinance No. 266; Ordinance No. 275; Ordinance No. 278; Ordinance No. 28; Ordinance No. 284; Ordinance No. 29; Ordinance No. 297; Ordinance No. 303; Ordinance No. 315 and Ordinance No. 337)*

## 28.15 **Regulations.**

### A. Prohibited Activities on District Transit System:

(1) Failure to Vacate Elderly and Disabled Priority Seating: No person shall fail to vacate seats on a District Vehicle designated for use by individuals with disabilities and those qualified for senior citizen (Honored Citizen) discount transit fares, when requested to do so by a peace officer or a District employee.

(2) Smoking: No person shall aboard a District Vehicle, in any elevator, in or upon a District Station, or within any space or area where posted signage prohibits smoking:

(a) Smoke an electronic cigarette, tobacco or any other substance;

(b) Inhale water vapor through use of a heated device; or

(c) Carry any heated, lighted or smoldering substance, in any form.

(3) Food and Beverages: No person shall bring or carry aboard a District Vehicle food or beverages in open containers, nor consume food aboard a District Vehicle.

(4) Radios, Compact Disk Players and other Sound-Emitting Devices without Earphones: No person except a peace officer, firefighter, District employee, or emergency response professional, in the course of employment, shall operate a radio, compact disk player, MP3 player, video player or other sound-emitting device, aboard any District Vehicle or in or upon any District Station, unless the only sound produced by such item is emitted by a personal listening attachment (earphone) audible only to the person carrying the device producing the sound.

(5) Shopping Carts and Unfolded Carriages or Strollers:

(a) Except while boarding a District Vehicle, no person shall carry an unfolded or

occupied carriage or stroller aboard any type of District Vehicle other than a low-floor light rail vehicle. Carriages or strollers must remain folded while aboard a District Vehicle except for a low-floor light rail vehicle.

- (b) No person shall bring or carry a commercial shopping cart aboard any type of District Vehicle. Non-commercial, individual-sized grocery storage carts not exceeding 18 inches deep, 18 inches wide and 30 inches high (excluding wheels and handles), are allowed provided they do not block aisles, stairways or doorways.
- (c) No person shall abandon a commercial shopping cart upon a District Station or District Parking Facility.

(6) Animals Except Properly Controlled Service Animals, Properly Contained Pets and Police Dogs: No person shall bring or carry aboard a District Vehicle or be present in or upon a District Station, the Tilikum Crossing Bridge or the Lafayette Pedestrian Bridge with an animal except:

(a) On a District Vehicle or in or upon a District Station:

- (i) Service Animals: A person accompanied by a Service Animal or a person training a Service Animal, so long as the animal is under the control of its handler, housebroken and restrained by leash, harness or other device made for the purpose of controlling the movement of an animal. A Service Animal may be carried on its handler's person but may not occupy a separate seat.
- (ii) Pets: A person transporting a pet if: (1) the animal is kept and held at all times within a secure container appropriate and constructed for carrying the size and type of animal; (2) the container does not block an aisle, stairway or doorway; (3) the animal can be transported without risk of injury to the animal and without risk of harm or inconvenience to other riders or District personnel, and (4) the animal can be transported in accordance with all other provisions of the TriMet Code.
- (iii) Police Dogs: A trained police dog accompanied by a peace officer.

(b) On the Tilikum Crossing Bridge or Lafayette Pedestrian Bridge:

- (i) Service Animals: A person accompanied by a Service Animal or a person training a Service Animal, so long as the animal is under the control of its handler, housebroken and restrained by leash, harness or other device made for the purpose of controlling the movement of an animal.
- (ii) Pets: A pet if: (1) the animal is kept and held at all times within a secure container appropriate and constructed for carrying the size and type of animal; or (2) the animal is under the control of its handler, housebroken and restrained by leash, harness or other device made for the purpose of controlling the movement of an animal.
- (iii) Police Dogs: A trained police dog accompanied by a peace officer.

(7) Noxious Fumes or Foul-Smelling Materials or Substances: No person shall carry aboard a District Vehicle any substance or material emitting a foul smell or releasing noxious fumes.

(8) Oversized Objects: No person shall bring or carry aboard a District Vehicle any package, article or object of a size which will block any aisle, stairway, or doorway on the District Vehicle.

(9) Skateboards, Rollerskates and In-line Skates: No person shall ride a skateboard, in-line skates or roller-skates upon a District Vehicle, District Station or District Parking Facility.

(10) Riding, Transport and Parking of Bicycles except in Compliance with Administrative Rules:

(a) Transport of Bicycles on District Vehicles. The transport of Bicycles on District Vehicles is permitted in accordance with administrative rules as may be promulgated by the General Manager provided that:

(i) No person shall bring aboard or possess a Bicycle on a District Vehicle in violation of the District administrative rules; and

(ii) No person shall ride a Bicycle upon a District Vehicle or District Station, except peace officers and authorized District personnel.

(b) Riding of Bicycles on Tilikum Crossing Bridge. The riding of Bicycles on the Tilikum Crossing Bridge is permitted in accordance with administrative rules as may be promulgated by the General Manager, provided that: no person shall ride a Bicycle in an area other than the designated Bicycle path unless the person is (i) overtaking and passing another Bicycle or a pedestrian that is in the Bicycle path and passage cannot safely be made within the Bicycle path, or (ii) avoiding debris or other hazardous conditions, and (iii) the person operates the Bicycle in a safe manner.

(c) Failure to Operate Bicycle in Safe Manner. Where the riding of Bicycles is permitted upon the District Transit System in accordance with administrative rules as may be promulgated by the General Manager and the TriMet Code, no person shall fail to operate a Bicycle in a safe manner upon the District Transit System. A person fails to operate a Bicycle in a safe manner if he or she operates a Bicycle in a manner that endangers or would be likely to endanger any person or property.

(d) Parking of Bicycles. No person shall affix or secure in any manner a Bicycle to any property of the District Transit System unless the property is designated by posted signage for Bicycle parking, or specifically designed for the purpose of parking Bicycles on the District Transit System and authorized by the District for such use.

(i) A Bicycle left on any property of the District Transit System for more than 72 hours may be impounded.

(ii) A Bicycle may be immediately impounded if:

(1) It is parked in violation of the TriMet Code and obstructs, interferes with or

impedes use of the District Transit System by the public; or

- (2) Is an immediate safety threat or otherwise interferes with or disrupts the function or safe operation of the District Transit System.
- (iii) The District shall make a reasonable attempt to notify the owner of the impoundment and a description of how and by what date the Bicycle must be claimed. The District may charge a reasonable administrative fee to the owner of any impounded Bicycle, however, no impoundment fee shall be charged to the owner of a stolen Bicycle that has been impounded. An impounded Bicycle that remains unclaimed after 30 days may be disposed of in accordance with District procedures for disposal of abandoned or lost personal property.

(11) Riding or Transport of Motorized Human Transporters and other Wheeled Transportation Devices except in Compliance with Administrative Rules or Law: No person shall operate or ride upon a motorized human transporter or other wheeled transportation device upon a District Vehicle, District Station, Tilikum Crossing Bridge or Lafayette Pedestrian Bridge, if such transporter or device has a gasoline or similar fuel-powered engine. A motorized human transporter or other wheeled transportation device that is powered by electricity may be operated or ridden upon a District Vehicle, District Station, Tilikum Crossing Bridge or Lafayette Pedestrian Bridge only in accordance with administrative rules as may be promulgated by the General Manager or as otherwise permitted by law.

(12) Corrosive and Soiling Substances: No person shall carry upon a District Vehicle any corrosive material or soiling substance where containment of such substance cannot be guaranteed.

(13) Excessive Noise: No person shall make excessive or unnecessary noise, including boisterous and unreasonably loud conduct, within any District Vehicle or District Station with the intent to cause inconvenience, annoyance or alarm to the public, District personnel, or a peace officer, or with a reckless disregard to the risk thereof.

(14) Display of Lights: No person shall light a flashlight, scope light, or laser light or object that projects a flashing light or emits beam of light while inside a District Vehicle except in an emergency, or from outside a District Vehicle if the light projects toward the driver or passengers of a District Vehicle in a manner that causes inconvenience, annoyance, alarm or a safety risk to the public.

(15) Improper Use of District Station/District Vehicle Seating: No person shall:

- (a) Lie down on or across the seats of a District Station or District Vehicle;
- (b) Place any object or substance on the seats of a District Station or District Vehicle that inhibits the proper use of such seats; or
- (c) Block or obstruct the use of the seats of a District Station or District Vehicle.

(16) Disruptive Conduct Inside a District Vehicle: 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 to the operator of a District Vehicle; or
- (c) Uses a District Vehicle for any purpose other than for transportation.

(17) Pedestrians on the Tilikum Crossing Bridge: No person who is a pedestrian on the Tilikum Crossing Bridge shall use any portion of the Tilikum Crossing Bridge except the area designated for pedestrian use, and shall not enter into the area designated as a Bicycle path unless temporarily required to do so for safety reasons.

B. Prohibited Misuse of District Transit System:

(1) Use of District Transit System for Non-Transit Purposes: No person shall enter or remain upon, occupy or use a District Station for purposes other than boarding, disembarking or waiting for a District Vehicle, in an area where non-transit uses are prohibited by posted signage. A person is in violation of this section only after having occupied a District Station for a period of time that exceeds that which is reasonably necessary to wait for, board or disembark a District Vehicle.

(2) Destructive Conduct Involving a District Vehicle: No person shall interfere with the safe and efficient operation of a District Vehicle through conduct which includes to:

- (a) Extend any portion of his or her body through any door or window of a District Vehicle while it is in motion;
- (b) Attempt to board or de-board a moving District Vehicle;
- (c) Throw, propel or discard any object or substance in any District Vehicle or through any open door or window of a District Vehicle;
- (d) Unreasonably prevent or delay the closure of an exterior door on a District Vehicle;
- (e) Strike or hit a District Vehicle, stop or cross in front of a District Vehicle for the purpose of stopping the District Vehicle or gaining passage after the District Vehicle has concluded boarding;
- (f) In any manner hang onto, or attach himself or herself to, any exterior part of a District Vehicle while the District Vehicle is resting or in motion.

(3) Refuse and Waste: No person shall discard or deposit or leave any rubbish, trash, debris, offensive substance or other solid or liquid waste in or upon a District Vehicle, District Station, District Parking Facility, Tilikum Crossing Bridge or Lafayette Pedestrian Bridge except in receptacles provided for that purpose. No person shall spit, defecate, or urinate in or upon a District Vehicle, District Station, District Parking Facility, Tilikum Crossing Bridge or Lafayette Pedestrian Bridge except in the confines of a lavatory where lavatories are available

for public use.

(4) Destruction of Signs: No person shall mutilate, deface or destroy any sign, notice or advertisement posted by the District or located on any District Vehicle, District Station, District Parking Facility, Tilikum Crossing Bridge, Lafayette Pedestrian Bridge or any other District property.

(5) Posting of Unauthorized Signs or Notices: Except as otherwise allowed by District regulations, no person shall place, permit or cause to be placed any notice or sign upon any District Vehicle, District Station or District Parking Facility or upon any vehicle without the owner's consent while the vehicle is parked therein.

(6) Violation of Signage. In addition to the prohibitions set forth elsewhere in TMC Chapters 28, 29 and 30, no person shall fail to abide by specific directives provided in the form of a fixed permanent or temporary sign posted in or upon the District Transit System that has been authorized by the General Manager to address a regulatory or security concern. The General Manager or the General Manager's designee may establish and post such signage in a manner to provide sufficient notice concerning the conduct required or prohibited. Any violation of the specific directives in any sign authorized by the General Manager shall constitute a violation of this subsection.

(7) Unlawful Gambling: No person shall engage in illegal gambling, or solicit others to engage in illegal gambling, aboard any District Vehicle, in or upon a District Station, or in or upon a District Parking Facility, in violation of ORS 167.117 to 167.162.

(8) Possession of Un-punched Paper Transfer Receipt or Unvalidated Machine Ticket Paper Stock: No person shall, without proper authority, possess an un-punched paper transfer receipt or unvalidated machine ticket paper stock on the District Transit System. Possession of an un-punched paper transfer receipt or unvalidated machine ticket paper stock by any person whose possession is not in the course and scope of employment as an authorized District representative shall be prima facie evidence that the un-punched paper transfer receipt or unvalidated machine ticket paper stock is stolen and possessed without proper authority.

(9) Alcoholic Beverages: No person shall possess an open container of alcoholic beverage on a District Vehicle, District Station, District Parking Facility, Tilikum Crossing Bridge or Lafayette Pedestrian Bridge, unless authorized by the District.

(10) Damaging or Defacing District Property: No person shall:

- (a) Draw graffiti or any other writing on any part of the District Transit System; or
- (b) In any manner damage, destroy, interfere with, or obstruct in any manner, the property, services or facilities of the District.

(11) Misuse of District Parking Facility Meter: No person shall:

- (a) Deface, injure, tamper with, break or destroy or impair the usefulness of any District Parking Facility meter, or open or remove the same without lawful authority; or

- (b) Remove any coin box or the money content of such coin box or the contents of any District Parking Facility meter or part thereof without lawful authority.
- C. No Criminal Activity: No person shall engage in activity prohibited by the criminal laws of any state, county, or municipality, in which the criminal incident occurs, while on a District Vehicle or in or upon a District Station, District Parking Facility, Tilikum Crossing Bridge or Lafayette Pedestrian Bridge.
- D. Prohibited Risks to Transit System Security and Order:
- (1) Flammable Substances and Ignition Devices: No person shall bring, possess or carry aboard onto a District Vehicle, District Station, District Parking Facility, Tilikum Crossing Bridge or Lafayette Pedestrian Bridge, any flammable substance or device that can cause a spark or flame, except for matches and cigarette lighters. No spark or flame may be lit or initiated at any time by any device on a District Vehicle, including matches and lighters.
- (2) Weapons: No person, except a peace officer, shall bring or carry aboard a District Vehicle any firearm, knife (except a folding knife with a blade less than 3 ½ inches in length), or any other instrument, article, device, material or substance specifically designed for, or attempted to be used to, inflict or cause bodily harm to another, except in accordance with administrative rules as may be promulgated by the General Manager or otherwise provided by law. Where possession of such weapons cannot be prohibited by law, a person in possession of a weapon, or in possession of a replica firearm, may not display or carry the weapon or replica firearm, in a manner which is likely to result in fear or alarm by other persons or District employees. As used in this section “replica firearm” means any device that substantially resembles a firearm or can reasonably be perceived to be an actual firearm.
- (3) Activation of the Emergency Stop Device Except in an Emergency: No person shall activate the “emergency stop” device of a District Vehicle in the absence of an emergency.
- (4) Interference with or Trespass on Light Rail or Commuter Rail Right-of-Way: No person shall:
- (a) Enter upon or remain upon the right-of-way of the light rail or commuter rail transit line so as to create a hazard to that person or interfere with the passage of a District Vehicle;
  - (b) Stop or park a vehicle on the light rail or commuter rail right-of-way in such manner as to interfere with the passage of a District Vehicle; or
  - (c) Fail to obey a District authorized posted directive or prohibition pertaining to entering, crossing or traveling upon the right-of-way.
- (5) Hazardous and Toxic Material or Substances: No person shall carry, possess or transport any hazardous material, toxic chemical, combustible liquid, biological contagion or agent, radioactive substance or any other inherently dangerous substance onto a District Vehicle or other District property unless the person is a District employee or authorized personnel acting in the course of employment.

(6) Harassment and Intimidation:

(a) While on the District Transit System, no person shall engage in harassment or intimidation through a course of conduct, including violent, threatening or disruptive behavior or conduct intended and likely to provoke a violent response, which places another person in reasonable fear of imminent physical harm, including, but not limited to, following such person around or about a District Vehicle or platform, or by preventing or delaying the movement or departure of such person through coercion or intimidation; or

(b) While on a District Vehicle, no person shall continue a course of conduct that may reasonably be expected to result in fear, alarm, or serious offense to other passengers or District personnel, after having received a lawful directive to cease such conduct or depart the District Vehicle, by a District employee or a peace officer.

(7) Explosive Materials or Device: No person may carry, possess or transport any explosive material or device, assembled or disassembled, onto the District Transit System unless the person is a District employee or authorized representative, peace officer, or emergency response professional, acting in the course of employment or duty.

(8) Threats: No person may utter a threat to cause damage to a District Vehicle or other part of the District Transit System, 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 part of the District Transit System; or state a threat of physical harm to a peace officer or District personnel acting in the course of employment

(9) Interference with Emergency Response: No person may impede the efforts of District personnel or peace officers in the course of an emergency response, including the failure to obey a lawful order by District personnel or peace officers uttered in the course of an emergency.

(10) Abandonment of Packages: No person shall knowingly abandon an unauthorized package on the District Transit System, where the abandonment of such package is likely to cause suspicion or alarm about its contents, or require the dispatch of emergency response personnel to remove and inspect the package.

(11) Discharge or Detonation of a Weapon: No person may throw an object at or discharge a bow and arrow, air rifle, rifle gun, revolver or other firearm at a District Vehicle or at any part of the District Transit System, or any person on District property, except that a peace officer in the course of employment is exempt from this paragraph.

(12) Violation of an Interdiction Command: No person shall violate a directive of an Interdiction Command. A person who fails to abide by the terms of an Interdiction Command and is found upon TriMet property in violation of such terms is present without lawful authority and is subject to arrest and prosecution for the crime of Interfering with Public Transportation (ORS 166.116) or the crime of Criminal Trespass in the Second Degree (ORS

164.245).

(13) Prohibited Activities on Tilikum Crossing Bridge: No person shall:

- (a) Affix or tie objects to the Tilikum Crossing Bridge;
- (b) Throw objects from or on to the Tilikum Crossing Bridge;
- (c) Climb on the Tilikum Crossing Bridge;
- (d) Hang, swing, or jump from or on to the Tilikum Crossing Bridge;
- (e) Remain in areas of the Tilikum Crossing Bridge not intended for public access, unless authorized or permitted by TriMet; or
- (f) Bring upon or operate a private vehicle upon the Tilikum Crossing Bridge, unless authorized or permitted by TriMet.

(14) Closure of Tilikum Crossing Bridge: The General Manager or his or her designee has the authority to close or restrict access to the Tilikum Crossing Bridge or any portion thereof, including the Bicycle or pedestrian portions, to use by the public. Notice of such closure will be communicated by the posting of conspicuous signs and/or the installation of physical barriers restricting access. No unauthorized person shall use or enter upon the Tilikum Crossing Bridge when access has been closed or restricted, or move or remove a physical barrier restricting access.

*(28.15 amended by Ordinance No. 168, section 5; Ordinance No. 179, Section 1; Ordinance No. 184, Section 1; Ordinance No. 189, Section 2; Ordinance No. 217, Section 1; Ordinance No. 228, Section 1; Ordinance No. 266; Ordinance No. 275; Ordinance No. 278; Ordinance No. 281; Ordinance No. 284; Ordinance No. 291; Ordinance No. 297; Ordinance No. 303; Ordinance No. 310; Ordinance No. 315 and Ordinance No. 337)*

## 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.
- B. A person excluded under TMC Section 28.18 may not during the period of exclusion, enter or remain upon any part of the District Transit System from which said person is excluded. An excluded person who enters or remains upon any part of the District Transit System from which the person has been excluded may be charged with the crime of Interfering with Public Transportation (ORS 166.116) or the crime of Criminal Trespass in the Second Degree (ORS 164.245).
- C. 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.

- D. The General Manager shall promulgate administrative rules establishing the types of violations on which an exclusion may be based and the duration of exclusion for each type of violation. The General Manager is further authorized to appoint a Hearings Officer(s), establish hearing procedures, and establish any other administrative requirements necessary to effectively implement the provisions of TMC Section 28.18. The General Manager is further authorized to review, investigate, invalidate or rescind any exclusion, at any stage during, or after, the processing of an exclusion, when the General Manager determines, in the General Manager’s sole discretion, that justice so requires. Nothing in this Chapter shall be interpreted as an abrogation or restriction of this discretion of the General Manager.
- E. An individual shall be provided notice concerning the rights to which the individual is entitled upon receipt of a Notice of Exclusion from an exclusion officer. Such notice shall include:
  - (1) A statement of the source of rule or law violated by reference to the title of the violation or crime, by reference to the citation of the violation or crime, or both;
  - (2) An explanation of the District’s internal review procedure, a description of the hearing process, and an explanation of the evidentiary burdens; and
  - (3) A statement of the duration of the exclusion, or alternatively, a statement of the mechanism by which the duration of the exclusion may be determined in accordance with administrative rules promulgated by the General Manager.
- F. Every person who receives a Notice of Exclusion shall be entitled to an administrative review by a District Exclusion Administrator within seven (7) business days from the date in which the Notice of Exclusion was issued. The purpose of the administrative review shall be to determine whether a Notice of Exclusion conforms to the administrative rules promulgated by the General Manager. If an Exclusion Administrator determines, after conducting an administrative review, that the Notice of Exclusion does not conform to District administrative rules, the Exclusion Administrator shall notify the individual that the Notice of Exclusion is invalid and withdrawn. If the administrative review confirms that a Notice of Exclusion was issued in conformity with District administrative rules, it shall be deemed valid, and the exclusion shall take effect on the eleventh (11<sup>th</sup>) business day following the date in which the Notice of Exclusion was issued, unless the individual requests a hearing. If a hearing is conducted, the Hearings Officer shall determine the date in which the exclusion takes effect. A hearing shall be conducted no later than ten (10) business days following the date of the individual’s request for a hearing unless the Hearings Officer determines, in his or her sole discretion, that a later date is warranted or necessary.
- 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.

- H. An individual who receives a valid Notice of Exclusion shall be entitled to a hearing. The purpose of the hearing shall be to:
- (1) Review and determine whether the evidentiary basis for issuance of the Notice of Exclusion was sufficient as a matter of law; and
  - (2) Determine whether the length and scope of an exclusion is commensurate with the nature of the violation; and
  - (3) Render a finding on whether it is more probable than not that the individual engaged in conduct justifying an exclusion; and
  - (4) Consider any mitigating and aggravating factors that the Hearings Officer determines relevant to the scope and length of an exclusion in his or her sole discretion; and
  - (5) Issue a final exclusion order to sustain, modify, or set aside a Notice of Exclusion.
- 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.
- J. In conducting a hearing and reaching a decision, the Hearings Officer may rely upon any evidence that a reasonable person would rely upon in making an important decision or conducting personal business. Hearsay is admissible, except where its admission would offend due process. The Hearings Officer shall have the authority to compel testimony or evidence deemed necessary, in the Hearings Officer's sole discretion, to a fair decision. The mechanisms available for compelling testimony or evidence shall be established through administrative rules promulgated by the General Manager.
- K. Notwithstanding any other provision of TMC Section 28.18, the General Manager, or his or her designee, upon a review of sufficient evidence, and the Hearings Officer, upon review of the Notice of Exclusion or the evidence presented at the hearing, must modify or set aside an exclusion under the circumstances provided for below:
- (1) An individual with a disability shall not be issued a complete exclusion from the District Transit System unless the person engaged in violent, seriously disruptive or criminal conduct, or in conduct posing a serious threat to the safety of others or to the operation of the transit system. Absent such a finding, if a Hearings Officer determines that a violation was more probable than not, the Hearings Officer shall order a qualified exclusion to permit an individual with a disability to use the District Transit System for trips of necessity, including travel to and from medical and legal appointments, school or training classes, places of employment, obtaining food, clothing and necessary household items, or for accessing any critical services.
  - (2) A transit dependent person shall not be issued a complete exclusion for the District Transit System unless the person engaged in violent, seriously disruptive, or criminal conduct, or in

conduct posing a serious threat to the safety of others or to the operation of the transit system. Absent such a finding, if a Hearings Officer determines that a violation was more probable than not, the Hearings Officer shall order a qualified exclusion to permit a transit dependent individual to use the District Transit System for trips of necessity, including travel to and from medical and legal appointments, school or training classes, places of employment, obtaining food, clothing and necessary household items, or for accessing any critical services.

Any person asserting the right to a qualified exclusion on the basis of transit dependence shall have the burden of establishing transit dependence by a preponderance of the evidence.

(3) A person issued a Notice of Exclusion for conduct determined to be expressive conduct protected by the First Amendment to the U.S. Constitution and Article I, Sections 3 and 8 of the Oregon Constitution, shall not be excluded on the basis of such conduct. If the Hearings Officer finds that a violation was more probable than not, but also finds that the conduct involved expressive conduct or the expression of a religious opinion, the Notice of Exclusion shall be set aside, unless the Hearings Officer also finds that the effect of the conduct endangered public safety, disrupted service, or interfered with transit operations. For the purposes of this paragraph, the parameters of the free expression and religious protections afforded under this Section 28.18 shall be coextensive with constitutional guarantees.

- L. Effect of Failure to Provide an Address. When a person receiving a Notice of Exclusion is not able, or refuses, to provide a mailing address at the time of issuance, the Notice of Exclusion shall set forth the procedure for picking up any letters, notices or orders produced by the Exclusion Administrator or Hearings Officer, in accordance with administrative rules promulgated by the General Manager.
- M. Within five (5) business days following the conclusion of a hearing, the Hearings Officer shall issue a final Order setting forth all findings and a decision on the exclusion, unless issuance of a final order within five (5) business days is not practicable. A final order shall be deemed issued on the date of mailing to all parties at the addresses provided by the parties, through regular U.S. Mail, and effective three (3) business days from the date of issuance.
- N. At any time during the pendency of a hearing, during the course of an administrative review, or following the exhaustion of administrative review, an excluded person may petition in writing to the General Manager, or designee, for a temporary waiver of the exclusion or modification of the terms of an exclusion, based upon a showing of need or changed circumstances. The General Manager, or designee, has the sole discretion to grant or deny the petition.

*(28.18 added by Ordinance No. 170, Section 2; amended by Ordinance No. 205, section 1; Ordinance No. 214, Section 1; Ordinance No. 230, section 1; Ordinance No. 266; Ordinance No. 275; Ordinance No. 278; Ordinance No. 284 and Ordinance No. 291)*

## 28.20 **Enforcement.**

- A. Any peace officer, Inspector, vehicle operator, or District Rail Controller, has the authority to refuse entrance on a District Vehicle, or District Station, require departure from a District Vehicle or District Station, or to require a seating change, of any person who violates any provision of TMC 28.15, regardless of location and regardless of presentation of pass, transfer, ticket, or valid payment of fare.

- B. Any person who violates any provision of TMC Section 28.15, in addition to other penalties provided by law, commits a violation as defined in ORS 153.005 and 153.008 punishable by a fine of not more than \$250. The presumptive fine applicable to a TMC Section 28.15 violation shall be \$175.
- C. Inspectors, peace officers appointed by the General Manager and all peace officers of the State of Oregon are authorized to issue citations, as provided by Oregon law, to any person who violates any provision of TMC Chapter 28.

Inspectors are not police officers as defined by ORS Chapter 237, and only have the powers to arrest afforded a private person under ORS 133.225.

- D. The General Manager may promulgate Administrative Rules governing the authorization of additional enforcement measures, if permitted by law, in response to heightened threat alerts issued by the Department of Homeland Security or other governmental intelligence agency, or in response to a declaration of emergency by the General Manager based upon a security threat.

*(28.20 amended by Ordinance No. 168, Section 6; Ordinance No. 179, Section 1; Ordinance No. 182, Section 2; Ordinance No. 208, Section 1; Ordinance No. 266; Ordinance No. 275; Ordinance No. 278; Ordinance No. 284; Ordinance No. 303; Ordinance No. 310 and Ordinance No 337)*

- 28.25 **Construction.** Nothing herein is intended to compromise or waive the right to enforce concurrently, or in the alternative, other remedies available pursuant to the Oregon Criminal Codes.