

Date: January 24, 2018

To: Board of Directors

From: Neil McFarlane 

Subject: **ORDINANCE NO. 349 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) AMENDING TRIMET CODE CHAPTER 29.35 CONCERNING PENALTIES FOR FARE EVASION (FIRST READING)**

1. Purpose of Item

Ordinance No. 349 adopts changes to TriMet Code Chapter 29.35 concerning penalties for fare evasion to implement the administrative option for citations authorized by the legislature in HB 2777.

2. Type of Agenda Item

- Initial Contract
- Contract Modification
- Other: Ordinance

3. Reason for Board Action

Under ORS 267.153, establishing an administrative process for resolving violations of the TriMet Code must be done by ordinance.

4. Type of Action

- Resolution
- Ordinance 1st Reading
- Ordinance 2nd Reading
- Other _____

5. Background

Currently, a person who fails to provide valid proof of payment on the system has committed a violation under ORS Chapter 153 and is subject to a fine. Under the TriMet Code, the presumptive fine for nonpayment of fare is \$175, and the maximum fine is not more than \$250.

With the passage of HB 2777 in 2017, the legislature authorized TriMet’s Board to enact an ordinance to create administrative penalties for violations of the TriMet Code. HB 2777 authorizes TriMet to stay the filing of a citation with a court for a period of 90 days. During that 90-day time period, TriMet can offer a fine, community service, or a hearing to resolve the citation. If the customer resolves the citation during the 90-day stay period, then TriMet will not file the citation with the court. If the customer does not resolve the citation

administratively with TriMet by the conclusion of the 90-day stay period, then TriMet will file the citation with the appropriate court consistent with current practice. Below is a summary of major changes to the TriMet Code made by Ordinance No. 349:

A. Citations Subject to Administrative Option

The administrative option is limited to those citations where a customer is age 18 or older and the only violation is a failure to provide valid proof of payment. A customer will not be offered the administrative options at this time for other violations of the TriMet Code, such as the behavioral Code provisions.

B. Options for Resolution

Instead of the single option of payment of a fine, customers will now have multiple options for resolving a citation. Additionally, the penalties will escalate with each offense in an effort to address repeat offenders.

The options available under Ordinance 349 include the following:

1. Fine. If paid during the 90-day stay period, the presumptive fine will be reduced to the following amounts:

- First offense: \$75
- Second offense: \$100
- Third offense: \$150
- Fourth offense and beyond: \$175 (no reduction)

2. Community Service. In lieu of a fine payment, the cited party will be allowed to complete community service during the 90-day stay as follows:

- First offense: 4 hours
- Second offense: 7 hours
- Third offense: 12 hours
- Fourth offense and beyond: 15 hours

A prior offense is determined by a check of TriMet's record system. If the records check cannot be completed, then the offense will be considered a first time offense.

Community service will be offered through entities approved by the General Manager. Resolution of a citation through community service will require appropriate evidence submitted to TriMet certifying a completion of the community service hours.

3. Low income/Honored Citizen Option. For those customers cited for fare evasion who: (1) are eligible for (but not enrolled in) TriMet's Low Income Fare or Honored Citizen programs; (2) successfully enroll in the Low Income Fare or Honored Citizen program during the 90-day stay period; and (3) load a minimum of \$10 on their reloadable fare card during the 90-day stay period, TriMet will reduce the citation to \$0 following verification of the above.

4. Hearings. TriMet will offer written and possibly limited in-person hearings to resolve certain citations where valid proof of payment can be documented following the

incident. This would include, for example, situations where an Honored Citizen forgets the required qualifying identification, but can furnish it later and therefore demonstrate proper fare. Limited hearings will allow for the resolution of the citations administratively without having to appear in court. The specific details outlining the method for requesting a hearing, the types of citations eligible for an in-house hearing, the hearing procedures, and other details will be set forth in rules issued by the General Manager.

Ordinance No. 349 will be operative on July 1, 2018. The complete proposed changes can be found in Exhibit A.

6. Financial/Budget Impact

There should be a limited financial impact. Under current law (ORS 153.622), if a court enters a judgment for conviction of a violation of a mass transit ordinance, the amounts collected are divided by statute. The first \$60 is paid to the state, and the remainder is split evenly between TriMet and either the court that entered the judgment, or the state (when the judgment is entered in a circuit court). Fines paid to TriMet under the administrative option will not be reduced to a judgment and, therefore, not be subject to the division of ORS 153.622. Any additional revenue collected by TriMet as a result of this change, however, will likely be offset by new technology and personnel requirements to administer this program.

7. Impact if Not Approved

The Board may choose to not conduct a first reading of Ordinance 349 at its January 24, 2017, meeting and not approve Ordinance 349.

ORDINANCE NO. 349

ORDINANCE OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) AMENDING TRIMET CODE CHAPTER 29.35 CONCERNING PENALTIES FOR FARE EVASION (FIRST READING)

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

Section 1- Amendment of TriMet Code Chapter 29

Amendments to TriMet Code Chapter 29 are adopted as set forth in the attached Exhibit A, which is incorporated into and made part of this Ordinance.

Section 2- Effective/Operative Dates

This Ordinance shall take effect thirty days after the date of its adoption. The amendments to TriMet Code Chapter 29 in Section 1 shall be operative on July 1, 2018.

Dated: January 24, 2018

Presiding Officer

Attest:

Recording Secretary

Approved as to Legal Sufficiency:



Legal Department

ORDINANCE NO. 349

EXHIBIT A

TriMet Code (TMC) Chapter 29, Regulations Governing Proof of Payment, Section 29.35 Penalties, is amended as set for below. Additions are show in underline, bold text. Unchanged sections of the chapter omitted for brevity.

29.35 Penalties.

A. Any person who violates any provision of TMC Section 29.15 commits a violation as defined in ORS 153.005 and 153.008 punishable by a fine of not more than \$250. The presumptive fine amount for a violation of TMC Section 29.15 is \$175.

B. Pursuant to ORS 267.153, for every citation issued to a person age 18 or over on or after July 1, 2018, where the sole violation of the TriMet Code is a violation of any of the fare payment requirements in TMC Section 29.15 A-C; or 29.15 F-G, the violation proceeding shall be stayed for a period of 90-days. During the 90-day stay period, the complaint, abstract of court record, or any other materials associated with the citation will not be filed with any court. Except as otherwise provided, for a citation subject to a 90-day stay, any resolution of the violation citation will take place directly with TriMet through the administrative process described in this section.

C. For the duration of the 90-day stay period, the presumptive fine described in TMC 29.35 A shall be temporarily reduced to the following amounts:

1. First offense: \$75
2. Second offense: \$100
3. Third offense: \$150
4. Fourth offense and beyond: \$175

D. In lieu of payment of a fine, for the duration of the 90-day stay period the cited person shall be allowed to complete community service with an approved community service program in the following amounts:

1. First offense: 4 hours
2. Second offense: 7 hours
3. Third offense: 12 hours
4. Fourth offense and beyond: 15 hours

Satisfaction of the community service option will require a cited party to provide evidence to TriMet of successful completion of the required community service hours at an approved community organization as described in rules issued by the General Manager.

E. A prior offense is determined by an examination of TriMet's records when the citation is issued. If the person issuing the citation is unable to complete a check of TriMet's records, the offense will be considered a first offense for purposes of the penalties in this section only.

F. Any person cited for fare evasion subject to a stay shall have the citation reduced

to \$0 upon verification of the following information in the manner required by TriMet:

- (1) The person is eligible for but not enrolled in TriMet's Low Income Fare or Honored Citizen program;
- (2) The person successfully enrolls in the Low Income Fare or Honored Citizen program during the 90-day stay period; and
- (3) The person loads a minimum of \$10 per citation on their reloadable fare card during the 90-day stay period,

G. The General Manager may adopt Administrative Rules to provide for in-person or written hearings for any citation subject to a 90-day stay. The rules shall establish the type of violations on which review may be considered. The General Manager is further authorized to appoint a Hearings Officer(s), establish hearing procedures, and establish any other requirements necessary to effectively implement this subsection. Any administrative hearing conducted under this subsection must be completed within 60 days of the date of issuance of the citation.

H. A citation subject to a stay is successfully resolved through the administrative process if:

- (1) The person pays the required fine in the manner proscribed by TriMet within the stay period;
- (2) The person fully performs community service in lieu of paying a fine, according to standards established by TriMet, within the stay period; or
- (3) TriMet, within the stay period, determines that the person did not commit the violation for which the person was cited or otherwise determines that no penalty should be assessed.

If a citation subject to a 90-day stay is successfully resolved through the administrative process during the 90-day stay as described, TriMet shall not file the complaint or abstract of court record with any court or otherwise initiate court proceedings relating to the citation

I. Upon the expiration of the 90-day stay for any citation not successfully resolved as provided in this section, TriMet will file with the appropriate court the complaint, abstract of record, and any other relevant documents for adjudication as provided in TMC 29.35A and applicable law.

J. A person whose citation is subject to a 90-day stay may, at any time during the stay period, request that the citation be filed with the appropriate court. The request may be made before, during, or after an administrative process conducted under the authority of this section. Upon such request, TriMet shall cease the administrative process with respect to the citation and shall file the complaint and abstract of court record with the appropriate court pursuant to ORS 153.054.

K. Once a citation is filed with a court for any reason the citation shall not be eligible for any of the administrative options for resolution described in this section.

L. Pursuant to ORS 267.153(8), for any citation subject to a stay under this section, the running of any applicable statutory time limitation for the commencement of a trial is tolled during the stay period.