

**Date:** December 14, 2022

**To:** Board of Directors

**From:** Sam Desue, Jr.

**Subject:** **ORDINANCE NO. 369 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) AMENDING TRIMET CODE CHAPTER 28 (SECOND READING)**

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**1. Purpose of Item**

Ordinance No. 369 will amend TriMet Code (TMC) Section 28.18 to enhance the security of the District transit system by authorizing increased penalties for violations of TMC Section 28.15 pertaining to prohibited conduct on the transit system.

**2. Type of Agenda Item**

- Initial Contract
- Contract Modification
- Other: Ordinance

**3. Reason for Board Action**

Amendments to the TriMet Code may only be made by adoption of an Ordinance by the TriMet Board of Directors (Board), which requires two readings and a public hearing.

**4. Type of Action**

- Resolution
- Ordinance 1<sup>st</sup> Reading and Public Hearing
- Ordinance 2<sup>nd</sup> Reading

**5. Background**

In 2017, the Board adopted Ordinance No. 346, which amended TMC Section 28.18 to authorize—for the first time—the General Manager to issue a long-term exclusion to a person who commits a serious physical offense against another person on the transit system. A long-term exclusion means an exclusion for a period of six months up to a permanent ban. Prior to the adoption of Ordinance No. 346, exclusions could be issued only for 30, 60 or 90 days.

Long-term exclusions are currently imposed on individuals who commit a “serious physical offense,” defined by TMC 28.18 A(1) as a felony against a person under Oregon law and including certain acts of harassment and intimidation under the TriMet Code. Oregon law specifies over 90 felonies against a person, which include crimes like homicide, assault, robbery, various sex crimes, and other serious offenses. In 2022, the Board unanimously adopted Ordinance No. 364, which added spitting on a TriMet employee or contractor as an offense eligible for a long-term exclusion.

Currently, the TriMet Code provides that a first offense would generally result in a long-term exclusion of six months to a year, with a second offense resulting in an exclusion of more than a year up to a permanent exclusion. However, the General Manager may issue an exclusion of a year or more for a first offense, if the person poses an immediate and serious threat (e.g., the person has caused serious injury, used a weapon, or committed a sexual assault).

Ordinance No. 346 built in protections for anyone subject to a long-term exclusion. First, any person issued a long-term exclusion may request a hearing to challenge the validity of the exclusion issued by the General Manager, and the TriMet Hearings Officer's decision is subject to judicial review. Second, for an exclusion of a year or longer, the excluded party may request a hearing once per year to demonstrate that the person has been rehabilitated and no longer represents a threat. This would include evidence of participating in rehabilitation programs and committing no additional offenses.

### **Proposed Ordinance No. 369**

Ordinance No. 369 would amend the TriMet Code to: (1) expand the number of offenses that are eligible for a long-term exclusion; (2) add chronic offenders to those eligible for a long-term exclusion; and (3) eliminate the first offense/second offense distinction in the Code for determining the potential exclusion length.

#### **1) Expand the definition of “serious physical offense” to include any Class A misdemeanor against a person and attempted felonies**

Ordinance No. 369 makes all Class A misdemeanors against a person under Oregon law eligible for a long-term exclusion. Class A misdemeanors are the most serious category of misdemeanors and include crimes like Assault IV, bias crimes in the second degree, public indecency, harassment that includes offensive sexual contact, as well as possession of a hoax destructive device. The proposed Ordinance also amends the TriMet Code to provide that an *attempted* felony against a person is subject to a long-term exclusion.

Since the adoption of Ordinance No. 346, there have been several serious events that were not eligible for a long-term exclusion because the crimes charged were Class A misdemeanors, rather than felonies against a person. These crimes included assaults of field operations staff and other passengers, which are generally charged as Assault IV, a Class A misdemeanor. There has also been one instance of a bias crime against an operator that was not eligible for a long-term exclusion because a Bias Crime in the Second Degree is a Class A misdemeanor, not a felony under Oregon law.

Long-term exclusions are reserved for situations where there is injury or harm done to a person, not general crimes like vandalism. Class A misdemeanors against a person do not include crimes such as interfering with public transportation or fare evasion, and these offenses would never result in a long-term exclusion.

#### **2) Remove the First/Second Offense Distinctions**

Ordinance No. 346 originally established tiered penalties for first and second offenses. First offenses were generally subject to a 6 to 12 month exclusion, but this limit could be overridden if the General Manager determined that a person committed a serious physical offense. However, most — if not all — of the crimes eligible for a long-term exclusion are serious physical offenses. Given the severity of the offenses eligible for a long-term

exclusion, Ordinance No. 369 removes the provision regarding first and second offenses. Instead, Ordinance No. 369 provides the General Manager with the discretion to determine the scope of an exclusion that is proportionate to the gravity of the offense, from six months up to and including a permanent ban.

Though both the current Code and the proposed amendment authorize imposition of a permanent ban, such a ban has only been issued once and for a serious and chronic sexual offender.

### **3) Addressing Chronic Offenders**

Ordinance No. 369 also expands eligibility for long-term exclusions to individuals who engage in chronic violations of TMC Section 28.15, which contains the non-fare related rules of riding. TMC Section 28.15 regulates a range of conduct including smoking, littering, excessive noise, non-transit use of the system, disruptive conduct on vehicles, harassment and intimidation, and threats. This amendment is directed at individuals who are not committing serious physical offenses against persons, but instead repeatedly commit Code violations and do not change their behavior despite multiple interventions. Individuals who repeatedly commit violations of the rules of riding within short periods of time disrupt and make unsafe the transit experience for our customers, and consume inordinate amounts of TriMet staff time and effort.

Ordinance No. 369 defines a chronic offender as a person with three or more violations of TMC Section 28.15 within a 90-day period. These violations include citations, exclusions, or violations of interdiction commands relating to improper conduct on the transit system. Under Ordinance No. 369, the General Manager is authorized to issue a chronic offender an exclusion for as long as two years.

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

None.

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

Passage of this Ordinance No. 369 will increase security on the transit system by amending TMC Section 28.18 to authorize long-term exclusions from the system to those who commit Class A misdemeanors in addition to felonies against persons, or commit chronic offenses on the transit system.

**ORDINANCE NO. 369**

**ORDINANCE NO. 369 OF THE TRI-COUNTY METROPOLITAN  
TRANSPORTATION DISTRICT OF OREGON (TRIMET) AMENDING  
TRIMET CODE CHAPTER 28 (FIRST READING AND PUBLIC HEARING)**

The Board of Directors of the Tri-County Metropolitan Transportation District of Oregon (TriMet), pursuant to the authority of Oregon Revised Statutes Chapter 267, and after providing the opportunity for public testimony, does hereby ordain and decree the following Ordinance:

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

TriMet Code Section 28.18 A(1) - (2) is amended as shown in the attached Exhibit A, with deletions shown by ~~striking out~~, and additions shown in underline; and the final version shown in the attached Exhibit B.

**Section 2- Effective/Operative Date**

This Ordinance No. 369 shall take effect thirty days after the date of its second reading.

Dated: December 14, 2022

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Presiding Officer

Attest:

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Recording Secretary

Approved as to Legal Sufficiency:

**Gregory E. Skillman**

Legal Department

## EXHIBIT A TO TRIMET ORDINANCE NO. 369

### AMENDING TRIMET CODE CHAPTER 28-18 A(1)-(2)

(Deletions are shown by ~~strikethrough~~ and additions are shown in underline.)

(1) Notwithstanding the six month maximum exclusion in 28.18 (A), the General Manager may issue an exclusion in excess of six months up to and including a permanent exclusion 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 either a Class A misdemeanor against another person or a felony against another person under Oregon law. A serious physical offense also includes any attempt to commit a felony against a person and any conduct prohibited by TMC 28.15(D)(6)(c). ~~The exclusion period shall be determined on a case-by-case basis, but will be based upon the following criteria:~~

~~(a) First Offense—Exclusion period of more than six months but less than one year.~~

~~(b) 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 the individual has committed a sexual assault, committed an assault that resulted in serious injury or death, or used a weapon to injure another person while offender is on the District Transit System.~~

(2) The General Manager may issue an exclusion of up to two years if the General Manager finds, based on a preponderance of the evidence, that an individual is a chronic offender. A chronic offender is a person who has been cited, excluded, or issued an interdiction command for violating any provision of Chapter 28.15 of the TriMet Code three or more times in a 90 day period.

(3) Exclusions issued by the General Manager under TMC 28.18 A(1)-(2) shall include information required by TMC 28.18 E.

**EXHIBIT B TO TRIMET ORDINANCE NO. 369**

**AMENDING TRIMET CODE CHAPTER 28.18 A(1) – (2)**

(1) Notwithstanding the six month maximum exclusion in 28.18 A, the General Manager may issue an exclusion in excess of six months up to and including a permanent exclusion 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 either a Class A misdemeanor against another person or a felony against another person under Oregon law. A serious physical offense also includes any attempt to commit a felony against a person and any conduct prohibited by TMC 28.15 D(6)(c).

(2) The General Manager may issue an exclusion of up to two years if the General Manager finds, based on a preponderance of the evidence, that an individual is a chronic offender. A chronic offender is a person who has been cited, excluded, or issued an interdiction command for violating any provision of Chapter 28.15 of the TriMet Code three or more times in a 90-day period.

(3) Exclusions issued by the General Manager under TMC 28.18 A. (1)-(2) shall include information required by TMC 28.18 E.