

TriMet Administrative Rules

Issuance and Processing of Exclusions

Authority: TMC 28.18

November 17, 2008

The following Administrative Rules (Rules) shall govern the issuance and processing of exclusions by TriMet, in accordance with the TriMet Code (also referred to hereinafter as "TMC" or "Code") Chapter 28.

Nothing in these Rules or the existence of these Rules shall prevent the District from taking any lawful steps to protect its employees, passengers and the District Transit System. Specifically, nothing in these Rules affects the right of the District or law enforcement to request the immediate departure of any person posing a safety threat to system users, District personnel or any other persons, or is in violation of criminal law or the TriMet Code. Further, nothing in these Rules affects the right of law enforcement to accomplish the forceful removal of any person posing an imminent threat, so long as the law authorizes such action.

The term "peace officer" in these Rules has the same meaning as set forth at TMC Section 28.10.

The term "business day," and used in these Rules, shall exclude all weekend days and the following holidays: Christmas Day, New Years Day, Martin Luther King Jr.'s birthday, Thanksgiving Day, Labor Day, Memorial Day and Independence Day. Holidays falling on a weekend day will be counted only as one weekend day and will not extend any deadline by an additional day by virtue of the holiday.

1. Authority for Exclusions

TriMet may exclude an individual from any or all parts of the District Transit System, as defined in Exhibit D for purposes of the issuance and enforcement of exclusions, for any violation under TMC Chapters 28, 29 or 30 for a period not to exceed six months, in accordance with TMC Section 28.18 and these Rules. In accordance with the Code, "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." The part of the District Transit System from which a person is excluded is defined solely by reference to Exhibit D.

Furthermore, 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).

A Notice of Exclusion may be issued by any authorized person under TMC Section 28.18(C) that has received training from TriMet or the Transit Police Division of the Portland Police Bureau, including peace officers, TriMet Fare Inspectors, and TriMet Road and Rail Supervisors (collectively "exclusion officers"), provided however, that TriMet will not recognize or enforce

an exclusion that does not conform to the requirements of the Exclusion and Citation Schedule or any exclusion determined by the General Manager to be based on insufficient facts or inconsistent with TriMet policy.

2. Designation of Violations Eligible for Exclusion and Length and Scope of Exclusions

The violations eligible for exclusion and the corresponding length of exclusion is established by the Exclusion and Citation Schedule ("Schedule"). The Schedule is incorporated by reference and attached hereto as Exhibit A. A Notice of Exclusion shall identify the violation supporting the exclusion and must state the length of exclusion specified in the Schedule. No person is permitted to vary the length of an exclusion, except:

- a. In accordance with the findings of the Hearings Officer. The Hearings Officer may vary the length or scope of an exclusion in accordance with his or her authority under the TMC and these Rules.
- b. In response to changed conditions. The General Manager, or designee, may modify an exclusion in accordance with TMC Section 28.18 (N).
- c. In response to a finding by the General Manager, or his or her designee, that an exclusion is not warranted or does not comport with District policy. The General Manager, or designee, may invalidate or modify an exclusion, based upon a review of all the facts and circumstances, as provided in Section 6 of these Rules.

3. Enforcement Requirements

a. Sufficiency of Facts and Cause for a Stop or Arrest

Any peace officer may fully exercise the powers granted to them within his or her respective jurisdiction while enforcing criminal laws on the District Transit System, except as provided in Exhibit D concerning criminal arrests on the basis of violations of Notices of Exclusion. Accordingly, peace officers, when enforcing criminal statutes on District property, may engage in valid stops based on reasonable suspicion or arrests based upon probable cause. District employees engaged in enforcement activity, who are not empowered to enforce the criminal laws, will be governed strictly by these Rules. Likewise, when peace officers are engaged in enforcement activity, and the nature of the conduct at issue is not defined in criminal statutes, but solely defined within the TMC, the permissible civil penalties that a peace officer may issue are governed by these Rules and the Schedule.

b. Sufficiency of Facts and Cause for Citation or Exclusion

All citations or exclusions issued for conduct or fare violations must be based upon probable cause. In determining whether there is enough evidence to justify an exclusion or citation, peace officers and exclusion officers may rely upon facts resulting from their own personal observations or reliable facts provided by witnesses or others.

c. Peace Officers: Use of Discretion

Peace officers shall exercise their discretion within the same constraints imposed by their respective departments and the law and shall be bound by the policies and procedures of their respective departments in the enforcement of criminal laws. If peace officers are engaged in enforcement directed at conduct which violates both the TMC and criminal statutes as defined in federal, state, county or local law, the law officer may use lawful discretion in determining whether to arrest or cite the individual under criminal statutes, or alternatively, cite or exclude the individual under the TMC. Notwithstanding this general principle, once a peace officer determines to apply civil penalties or fines authorized by TMC Chapters 28, 29 or 30, the Schedule shall apply.

d. Notice of Exclusion

Every person alleged to have engaged in conduct in violation of the TMC, and sought to be excluded for that violation, shall be issued a Notice of Exclusion. The Notice of Exclusion to be used for TriMet exclusions is incorporated by reference and attached hereto as Exhibit B. The exclusion officer alleging the violation shall complete the Notice of Exclusion in its entirety and must provide a copy of the notice to the individual sought to be excluded. The Notice of Exclusion may be issued to the person sought to be excluded contemporaneously with the course of conduct supporting the exclusion or at some time period after the violating conduct has occurred. When the Notice of Exclusion is issued to the person sought to be excluded at some time period after the violating conduct has occurred, the Notice of Exclusion must be personally served upon the person sought to be excluded. At no time may a Notice of Exclusion be served to a person sought to be excluded more than six (6) months after the violating conduct has occurred.

In order to be deemed valid by an Exclusion Administrator, the Notice of Exclusion must accurately denote the violating conduct and reference the applicable TMC provision or Oregon criminal statute that was violated, in accordance with TMC 28.18(E)(1).

4. Multiple Penalties

A citation and an exclusion will not be issued for the same act or omission committed by a single person during a single interaction. However, multiple citations, or a citation and an exclusion, may be issued to a single person who during a single interaction engages in multiple acts or omissions that constitute violations of different Chapters of the TriMet Code or different provisions of a single Chapter of the TriMet Code. The issuance of a citation or exclusion to a person shall not prevent the arrest, prosecution or conviction of that person for violation of criminal laws for the same or different act or omission.

5. Stay of Order

In accordance with TMC Section 28.18(G) and the Schedule, all exclusions will be subject to an automatic stay of ten (10) business days following the date of issuance to an individual. Thus, exclusions will not take effect until the eleventh (11th) business day following the date of issuance, or if a hearing has been conducted, the date on which the Hearings Officer's final order takes effect in accordance with the terms of the final order. The Hearings Officer may extend the

period of the stay if a hearing cannot be scheduled within ten (10) business days of the issuance of a Notice of Exclusion.

6. Review of Notices of Exclusions

Every exclusion order issued by exclusion officers shall be subject to the review of a District Exclusion Administrator, in accordance with TMC Section 28.18(F). An Exclusion Administrator shall review each Notice of Exclusion and any supporting documentation submitted by the exclusion officer to determine whether (a) the Notice of Exclusion is filled out completely and in a manner that permits a determination of validity; (b) whether the Notice of Exclusion conforms to these Rules and the Schedule, (c) whether the sufficiency of the narrative support submitted by the issuing officer warrants review by the General Manager, and (d) whether the exclusion has been issued to a person not eligible for a complete exclusion under the circumstances outlined in Section 15 of these Rules.

If the Exclusion Administrator determines that the Notice of Exclusion requires review by the General Manager, based on the sufficiency of the narrative or ineligibility of the person excluded for a complete exclusion, he or she shall refer the Notice of Exclusion to the General Manager, or the General Manager's designee. The General Manager or designee will review the written record of the exclusion and engage in any other additional investigation deemed appropriate or necessary to a fair review. The General Manager or designee, in his or her sole discretion, may invalidate or modify an otherwise valid exclusion, if, upon review, the General Manager or designee determines that the exclusion is not warranted or does not comport with District policy. If the Notice of Exclusion is properly completed and conforms to these Rules and the Schedule, and the General Manager or designee has not invalidated the exclusion, the Exclusion Administrator shall deem the exclusion valid. An Exclusion Administrator shall make a determination of validity for a Notice of Exclusion within seven (7) business days of the date of issuance of the Notice of Exclusion. If a Notice of Exclusion is determined to be invalid and withdrawn, an Exclusion Administrator shall notify the individual cited for the violation, by sending a letter ("Notice Letter"), through regular mail, within the seven (7) day period of administrative review. The Exclusion Administrator may also attempt to notify the individual by telephone that the exclusion has been withdrawn, if a telephone number is provided on the Notice of Exclusion.

If the Notice of Exclusion is deemed valid by an Exclusion Administrator, the excluded individual shall be entitled to further review in the form of a hearing.

7. Right to a Hearing

Every person issued a Notice of Exclusion shall be entitled to a hearing as a matter of right. The purpose of the hearing is (a) to review and determine whether the evidentiary basis for issuance of the exclusion is sufficient as a matter of law; (b) to determine whether the length and scope of the exclusion is commensurate with the nature of the violation; (c) to render a finding on whether it is more probable than not that the individual engaged in conduct justifying the exclusion; (d) consider any mitigating and aggravating factors relevant to the scope and length of the exclusion; (e) and issue a final exclusion order to sustain, modify, or set aside a Notice of Exclusion. All

persons receiving an exclusion receive notice of their right to a hearing on the Notice of Exclusion.

8. Initiation of Proceedings

An individual who has received a Notice of Exclusion must contact TriMet by 5:00 p.m. no later than the tenth (10th) business day following the issuance of a Notice of Exclusion in order to request a hearing. The request may be made by phone or by letter, but if requested by letter, the letter must be received by the Exclusion Administrator by the tenth (10th) business day following the issuance of the Notice of Exclusion. An individual requesting a hearing need not demonstrate cause for the hearing, and the Exclusion Administrator shall immediately forward a copy of the Notice of Exclusion and any supporting documentation to the Hearings Officer. The Hearings Officer, or his/her designee, will contact the individual by phone or mail to schedule a hearing within three (3) business days of receipt of the Notice of Exclusion. The Hearings Officer shall provide notice to the exclusion officer that issued the Notice of Exclusion of the date and time of the hearing in accordance with the Hearings Officer's procedures for issuing such notice.

9. Scheduling of Hearings

- a. **Hearing Date:** Each hearing shall be scheduled directly with the Hearings Officer or his/her designee. To the extent possible, the Hearings Officer shall make every attempt to schedule each hearing at a time that is convenient for appearance by the excluded individual, TriMet, and any witnesses, including exclusion officers. All hearings shall be scheduled on a weekday, Monday through Friday, during normal business hours.
- b. **Continuance:** The Hearings Officer may grant a continuance, on its own motion or the motion of one of the Parties, if a continuance is warranted or necessary. The Hearings Officer has the sole discretion to grant or deny a continuance. Further, the Hearings Officer has the discretion to impose a stay, pending the later hearing date, in accordance with paragraph 8.

10. Treatment of Evidence

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 Hearings Officer may receive testimony concerning the interpretation of the TriMet Code or Administrative Rules from any TriMet representative.

If the Hearing Officer determines, in his or her discretion, that justice requires compulsory process in order to allow a Party to fully present evidence, he or she may issue a subpoena, schedule a deposition, or order any other evidence-collection process specifically allowed in City of Portland hearings.

The City of Portland procedures for securing evidence are incorporated by reference and attached hereto as Exhibit C.

11. Statement of Rights by Hearings Officer

The Hearings Officer shall advise all parties, through written correspondence or personally when parties appear for the hearing, of the following rights:

- Hearings shall be informal and shall be conducted so as to facilitate the parties' ability to present their respective positions to the Hearing Officer. The District shall present its reasons for the exclusion first, and then the person contesting the exclusion shall present his or her reasons in support of rescission or modification of the exclusion.
- The Hearings Officer may question the parties and witnesses, and shall review all evidence submitted by the parties.
- The hearing shall be electronically recorded.
- An aggrieved party has the right to seek review through a Writ of Review to the Circuit Court of Multnomah County, Oregon.
- A party has the right to representation by an attorney.
- The District has the burden of proof, based upon a presentation of substantial evidence, to establish that it is more probable than not that the conduct justifying the exclusion occurred and that no factors are present to nevertheless warrant setting aside the exclusion.

12. Length and Scope of Exclusions

The length and scope of an exclusion shall be determined in light of all the facts and circumstances giving rise to the exclusion. After consideration of the evidence presented, the Hearings Officer may sustain the exclusion, modify the exclusion or set aside the exclusion. The Hearings Officer shall make a finding on whether it is more probable than not that the excluded individual engaged in the conduct supporting the exclusion. In addition, the Hearings Officer shall consider any mitigating or aggravating factors in determining the appropriate scope and length of the exclusion, that the Hearings Officer determines relevant, in his or her sole discretion.

If the Hearings Officer determines that the exclusion will be sustained but the scope or length of the exclusion is not commensurate with the seriousness of the violation, the Hearings Officer may modify the exclusion. An order modifying the exclusion should discuss the Hearings Officer's basis for the modification of the exclusion, including a discussion of findings related to the factors listed above.

13. Final Order by the Hearings Officer

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. If a final order cannot be issued within five (5) business days of the hearing, the Hearings Officer shall extend the stay on the exclusion until the final order is effective. 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.

The Final Order shall set forth the findings of the Hearings Officer and the basis for such findings. If the Final Order sustains or modifies the Notice of Exclusion, the Final Order shall clearly set forth the period of exclusion, including the exact starting and ending date.

14. Circumstances Affecting the Applicability of Exclusions

If the Hearings Officer determines that the District has established that the violation was more probable than not, and that consideration of the factors justifies sustaining the exclusion, the Hearings Officer must nevertheless modify or set aside the exclusion in the circumstances defined below.

For the purposes of this section, and in accordance with TMC Section 28.10, a “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. The Hearings Officer has the discretion to order a qualified exclusion that specifically responds to the individual needs of an individual covered by the following circumstances affecting the applicability of exclusions.

a. Exclusions Issued to Disabled Persons

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 system for trips of necessity (e.g., 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.).

b. Exclusions Issued to Transit Dependent Persons

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 an individual with a disability to use the system for trips of necessity (e.g., 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.

“Transit Dependent” means a person who has no independent source of transportation and relies solely on public transit for local movement and access.

c. **Exclusions Issued Based Upon Expressive Conduct or Exercise of Religious Opinion**

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 paragraph shall be coextensive with constitutional guarantees.

15. Treatment of Persons Who Do Not Provide a Mailing Address

If a person issued a Notice of Exclusion cannot, or will not, provide a mailing address at the time of issuance by an exclusion officer, Notice Letter from an Exclusion Administrator, correspondence from the Hearings Officer, and any other documents concerning the exclusion, shall be made available for pick-up at TriMet administrative offices or the office of the Hearings Officer. If at any time during the pendency of a hearing, an excluded individual, or his or her representative, designates an address for mailing, any correspondence or documents produced subsequent to the date of the request shall be mailed to the address designated by the individual. If an individual is represented by counsel in the exclusion proceedings, all written materials shall be provided to the individual’s attorney, at the attorney’s mailing address.

An excluded individual without a mailing address may personally appear at the TriMet administrative offices, or the offices of the Hearings Officer, to request a hearing, or any other process to which the individual is entitled.

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 an Exclusion Administrator or Hearings Officer, in a manner that is consistent with these Rules.

16. Appointment of Hearings Officer

In accordance with TMC Section 28.18, the City of Portland Hearings Officer(s) is designated to conduct TriMet Code exclusion hearings. Hearings shall be conducted in accordance with TMC Section 28.18 and these Rules.

17. Designation of Exclusion Administrator(s)

TriMet's Executive Director of Operations is delegated the authority to designate Exclusion Administrator(s) to conduct administrative review of exclusion notices as provided by TMC Section 28.18 and these Rules.

These Rules supersede and replace in their entirety all exclusion Administrative Rules in effect prior to November 17, 2008.

EXHIBIT A: Exclusion and Citation Schedule

| <u>Violation</u> | <u>Remedies</u> |
|---|---|
| Fare Violations | Exclusion: 30 days; Citation (\$115) or Warning |
| Prohibited Activities on Transit | Exclusion: 30 days; Citation (\$115) or Warning |
| Prohibited Mis-Use of District Transit System | Exclusion: 30 days; Citation (\$115) or Warning |
| Prohibited Criminal Activity | Exclusion: 60 days; Citation (\$115) or Warning |
| Prohibited Risks to Transit System Security/Order | Exclusion: 90 days; Citation (\$115) or Warning |

EXHIBIT B: Notice of Exclusion

EXHIBIT C: City of Portland Procedures for Securing Evidence

Extracted from Portland City Code, Chapter 22.10

22.03.060 Depositions or Subpoena of Material Witness; Discovery.

A. On petition of any party, the Code Hearings Officer may order that the testimony of any material witness be taken by deposition in the manner prescribed by law for depositions in civil actions. Depositions may also be taken via audio or audio-visual recordings. The petition shall set forth the name and address of the witness whose testimony is desired, a showing of the materiality of the witness' testimony, and a request for an order that the testimony of such witness be taken before an officer named in the petition for that purpose. If the witness resides in this State and is unwilling to appear, the Code Hearings Officer may issue a subpoena as provided to require his appearance before such officer.

B. The Code Hearings Officer may, by rule, prescribe other methods of discovery which may be used in proceedings before the Hearings Officer.

22.03.070 Subpoenas.

A. The Code Hearings Officer shall issue subpoenas to any party upon showing of general relevance and reasonable scope of the evidence sought. Witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the City, shall receive fees and mileage as prescribed by law for witnesses in civil actions.

B. If any person fails to comply with any subpoena so issued or any party or witness refuses to testify on any matters on which he may be lawfully interrogated, the judge of the Circuit Court of any county, on the application of the Code Hearings Officer, or of a designated representative of the Code Hearings Officer or of the party requesting the issuance of the subpoena, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of subpoena issued from such court or a refusal to testify therein.

22.03.075 Discovery of Documents and Things

A. On petition of any party and a showing of the general relevance of the documents or things sought, the Code Hearings Officer may enter an order directing any party to produce and make available to the petitioning party to inspect and copy any documents or to inspect and copy, test, or sample any things which are in the possession of a party.

B. The order directing a party to produce and make available documents or things may require the petitioning party to pay the party producing documents and things that party's reasonable costs associated with such production.

C. The Code Hearings Officer shall not enter an order requiring a party to produce any document or thing which is privileged under the rules of privilege recognized by law or which is exempt from disclosure under the Oregon Public Records Law.

Exhibit D: Definition of the District Transit System for the Issuance and Enforcement of Exclusions

Notwithstanding any definition of the geographic boundaries of the District Transit System contained within O.R.S. 267.010, resolutions affecting TriMet's boundaries, contract provisions, the TriMet Code, any formal legal designation of certain property as owned or controlled by TriMet, or elsewhere, the geographic boundaries of the District Transit System, for the purpose of enforcing TriMet regulations through exclusions, or enforcing exclusions through arrest or criminal citation, shall be construed as limited to the areas that are readily discernable as TriMet property, as defined herein. No person shall be issued a Notice of Exclusion for conduct that occurred outside of the boundaries defined herein. In addition, the "part of the District Transit System from which said person is excluded" shall be limited to the following:

1. TriMet Vehicles. TriMet Vehicles shall include buses, vans, light rail and commuter rail vehicles, or any other vehicle used to transport passengers and owned by or operated on behalf of the District.
2. TriMet Parking Facilities. TriMet parking facilities shall include all parking lots reserved for transit purposes, including park and ride facilities, and including all driving pathways to and within a parking lot, but not including adjacent sidewalks or walkways.
3. Partially or Fully Enclosed Bus Shelters. Partially or Fully Enclosed Bus Shelters include those shelters placed along the District bus routes that are covered by an awning or roof and enclosed on at least two sides, including the ground space within the drip-line of shelters, that are designed to serve as a covered area for boarding and deboarding passengers, but do not include bus stops served solely by benches or signs.
4. Transit Dedicated Light Rail and Commuter Rail Platforms. Transit Dedicated Platforms include those platforms that are used solely for the purpose of transit and have no shared use with the public or public walkways, through-ways, or sidewalks, and includes adjoining stairways, ramps and elevators.
5. Trackways: All trackway areas where pedestrian traffic is prohibited, but excluding all areas of trackway in downtown Portland where tracks lay upon city streets, and excluding areas of trackway located at signalized or signed intersections designated for pedestrian or vehicular crossing.