

Date: January 26, 2022

To: Board of Directors

From: Sam Desue, Jr.

Subject: ORDINANCE NO. 364 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) AMENDING CHAPTERS 28 AND 29 OF THE TRIMET CODE TO LIMIT WHEN LAW ENFORCEMENT MAY CONDUCT FARE INSPECTIONS, CREATE A NEW OFFENSE REGARDING EMPLOYEE ASSAULTS, ALLOW TRIMET PERSONNEL TO ADDRESS NON-CRIMINAL VIOLATIONS, AND UPDATE TERMINOLOGY (SECOND READING)

1. Purpose of Item

Ordinance No. 364 amends Chapters 28 and 29 of the TriMet Code to prohibit law enforcement from asking customers for proof of payment unless specifically authorized by the General Manager, allows TriMet staff to address non-criminal violations, creates a new offense for aggravated assault of TriMet employees, removes references to outdated services, and makes updates to terminology.

2. Type of Agenda Item

- Initial Contract
- Contract Modification
- Other Ordinance

3. Reason for Board Action

The Board may amend the TriMet Code only by adoption of an ordinance.

4. Type of Action

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

5. Background

The Reimagine Public Safety Initiative and other previous Board actions related to system safety reflect the need for a layered approach to safety that considers a wide range of strategies. Informed by significant public outreach, over the last several years TriMet has launched a low-income fare program, decriminalized fare evasion, increased the number of non-law enforcement personnel on the system, executed a new contract with the Multnomah County Sheriff’s office for transit police services, conducted trainings for staff on anti-racism, cultural competency, mental health and de-escalation, and is developing a crisis intervention team model.

TriMet has also reviewed the TriMet Code to determine whether the Code should be modified to further TriMet's efforts to take a balanced and holistic approach to security. Based on that review, Ordinance No. 364 proposes several changes to Chapters 28 and 29 of the TriMet Code, as explained below:

A. Prohibits Police Officers from Asking for Proof of Payment.

Ordinance No. 364 codifies current policy and prohibits police officers from asking for proof of payment unless authorized by the General Manager. This will remove law enforcement from direct involvement in the fare inspection process. The ordinance provides clarity with respect to police activities indirectly related to fare inspection. While police may not generally conduct fare enforcement, police may continue to be present during fare enforcement activities, investigate other offenses, assist in identifying a person or conducting activities reasonably related to an investigation, and intervene when needed for safety.

TriMet's Board has a longstanding history of supporting efforts to decriminalize fare evasion. Ordinance 349 (2018) created new administrative options to resolve fare evasion citations outside of the court system, including reduced penalties, community service, or enrollment in the low income fare program. Ordinance 351 (2018) removed the possibility of criminal penalties for any person whose sole offense is failing to provide valid proof of payment. Consistent with these prior efforts, Ordinance No. 364 is the next step in fully decoupling police from fare inspections.

Ordinance No. 364 contains an exception to the general rule that police cannot conduct fare inspections. This Ordinance would establish that, in the case of security situations that may require police involvement, the General Manager may authorize police to perform fare inspections based on a safety need. The General Manager must make this determination in writing and communicate promptly to the Board of Directors that police will be conducting fare inspections. Additionally, the next regular meeting of the Board of Directors must include, as an agenda item, a report from the General Manager that police will be conducting fare inspections, the reason for the action, and the anticipated duration of police inspections.

B. Establishes New Offense To Protect Operators from Assault

Ordinance No. 364 amends Chapter 28 of the TriMet Code to provide for a new offense of propelling "saliva, blood, urine, semen, feces or other dangerous substance at a District employee or authorized personnel acting in the course of employment." As the Board is aware, operator assaults have continued to be a challenge for the agency and our employees. Operators remain concerned about assaults and deserve to feel protected at work. In addition to prohibiting this conduct, Ordinance No. 364 includes a provision that categorizes a violation of this new offense as a serious physical offense eligible for a long-term exclusion under the TriMet Code. This ordinance demonstrates support for our employees and zero tolerance for the types of assaults that we are unfortunately continuing to see on our system.

Under current law, the behavior prohibited by this change could be charged criminally as a misdemeanor, but such criminal charges are unlikely to include a long-term prohibition from riding the system. This proposed change is modeled after ORS 166.070, Oregon's aggravated harassment statute, which protects public safety officers and corrections officers.

C. Allows Non-Law Enforcement to Address Non-Criminal Violations

Ordinance No. 364 amends Chapter 28 of the TriMet Code to allow TriMet safety and security personnel to address non-criminal violations of state and local laws, rather than limiting these actions to law enforcement. A longstanding provision in the Code prohibits any person from engaging in activity defined as a crime by the laws of the state of Oregon or any political subdivision (TMC 28.15 C).

As defined by ORS 161.515, a crime is “an offense for which a sentence of imprisonment is authorized.” Several crimes, including possession of small amounts of drugs, have been decriminalized and now are categorized as violations under ORS Chapter 153. Violations are not classified as crimes under Oregon law because the only penalty is monetary, without imprisonment.

Oregon’s decriminalization of these crimes has created a situation where conduct classified as a violation of a state or local law — but not a crime — cannot be regulated on the TriMet system by District personnel, because it does not violate the Code. Only law enforcement can take action when a person commits a non-criminal violation on the TriMet system that is not otherwise regulated by the TriMet Code. This Ordinance would amend the Code to allow TriMet staff to address these non-criminal offenses without reliance on law enforcement.

D. Updates Terminology, Removes Outdated References, and Adds Gender Neutral Language

Ordinance No. 364 adopts consistent terminology about who may ask for proof of payment by eliminating outdated references and making the Code consistent with ORS Chapter 153 as it relates to Enforcement Officers. Chapters 28 and 29 of the Code currently refer to various enforcement officials including inspectors, peace officers, and peace officers appointed by the General Manager. The proposed changes track the terminology used in state law (ORS 153.005) by referring to Enforcement Officers, which is a term that includes both law enforcement and non-law enforcement.

The ordinance removes outdated references in Chapter 29 to the mobile ticketing application, which TriMet no longer offers. Additionally, the ordinance updates Chapters 28 and 29 with gender-neutral language.

6. Impact if Not Approved

If not approved, the TriMet Code would not be amended.

ORDINANCE NO. 364

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TRANSPORTATION DISTRICT OF OREGON (TRIMET) AMENDING
CHAPTERS 28 AND 29 OF THE TRIMET CODE TO LIMIT WHEN LAW
ENFORCEMENT MAY CONDUCT FARE INSPECTIONS, CREATE A NEW
OFFENSE REGARDING EMPLOYEE ASSAULTS, ALLOW TRIMET
PERSONNEL TO ADDRESS NON-CRIMINAL VIOLATIONS, AND UPDATE
TERMINOLOGY (SECOND 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- Amendments to TriMet Code Chapters 28 and 29

Amendments to TriMet Code Chapter 28 are adopted as set forth in the attached Exhibit 1,
which is incorporated into and made part of this Ordinance.

Amendments to TriMet Code Chapter 29 are adopted as set forth in the attached Exhibit 2,
which is incorporated into and made part of this Ordinance.

Section 2- Effective Date

This Ordinance shall take effect thirty days after the date of its adoption.

Dated: January 26, 2022

Presiding Officer

Attest:

Recording Secretary

Approved as to Legal Sufficiency:

Legal Department